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THE CHEMICAL SAFETY INFORMATION AND SITE SECURITY ACT OF 1999

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
HEALTH AND ENVIRONMENT

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

H.R. 1790

MAY 19 and 26, 1999

Serial No. 106–24

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THE CHEMICAL SAFETY INFORMATION AND SITE SECURITY ACT OF 1999

WEDNESDAY, MAY 19, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON HEALTH AND ENVIRONMENT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:24 p.m., in room 2123, Rayburn House Office Building, Hon. Michael Bilirakis (chairman) presiding.

Members present: Representatives Bilirakis, Stearns, Deal, Bilbray, Whitfield, Cubin, Pickering, Bryant, Bliley (ex officio), Brown, Waxman, Pallone, Green, Strickland, DeGette, Barrett, and Dingell (ex officio).

Staff present: Anthony Habib, legislative clerk; Joe Stanko, majority counsel; Bob Meyers, majority counsel; and Alison Berkes, minority counsel.

Mr. BILIRAKIS. The hearing will coming to order.

I would like to, first, thank our witnesses for appearing today to discuss H.R. 1790, the legislation concerning the Internet posting of chemical worst-case release scenarios.

This legislation was introduced by Full Committee Chairman Bliley at the request of the administration. It is my understanding that the bill was developed only after weeks of interagency discussions between the Environmental Protection Agency, the Department of Justice, the Federal Bureau of Investigation, and other Federal entities. Therefore, I believe it is fair to state that this legislation represents a consensus of the administration on this issue, and that by submitting this bill to Congress, the administration has requested us to act on behalf of the security interests of this Nation and to protect the general public from harm. So I, therefore, take this legislative request by the administration very seriously.

At our hearing of February 10, the administration opposed third parties making worst-case scenario information available in a searchable, electronic format. The FBI has indicated that such information, and I quote, "can directly be used as a targeting mechanism in a terrorist or criminal incident." Since present law will not prevent the public dissemination of this information to all corners of the world via the Internet, H.R. 1790 represents a necessary, indeed, unavoidable change in the law.

I must say at the outset, however, that while this bill represents a consensus among various agencies and departments of the Federal Government, it is not—as my ranking member just recently said—a perfect product.

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As we will hear today, there are elements of this legislation which will require additional action by the administration, in terms of regulations and guidance.

Furthermore, there are elements of this legislation which we may want to carefully consider and revise before sending a final product to the President for signature. Whenever we establish new Federal law, we must take care to draft provisions carefully and to thoroughly consider the ramifications.

But it is also equally clear that we just plainly do not have much time. Since H.R. 1790 was not transmitted to Congress until May 7, we have a little over 4 weeks from today to complete all of the necessary procedural steps in the House and the Senate. I don't think I need to remind members that committee reports, floor consideration, and conference committee are necessary. All require substantial amounts of efforts, so we must then act with all reasonable speed.

In this regard, I intend to work with my colleagues from both sides of aisle—we have done some great things up here the last 2 or 3 years of working together—and with the administration to ensure the legitimate concerns with the legislation are addressed. But I do not intend to let the clock run out while we are still talking and not acting, and I want to make that clear.

In summation, the legislation before us attempts to create a finely honed exception to the general provision of risk management plan data to the public, based on FBI's analysis of terrorist threats and based on month's-long review and discussion by governmental experts in law, law enforcement, and environmental policy.

As such, the legislation is a narrow measure, based on wide-ranging interagency review, which is essentially designed to avert a defined threat. We should, therefore, resist any temptation to expand this legislation beyond its essential purpose and to work to perfect this legislation, while not making the perfect—the enemy of the good.

The Chair now recognizes Mr. Brown for an opening statement.

Mr. BROWN. I thank you, Mr. Chairman.

We are meeting today to receive testimony on the Chemical Safety Information and Site Security Act, H.R. 1790.

The Clean Air Act requires chemical facilities to file risk management plans which include information on the consequences of serious chemical accidents, known as the worst-case scenario or offsite consequence analysis data.

The information was all intended to be publicly available to allow communities to prepare for accidents, but concerns have been raised that terrorists could use it to plan attacks on chemical facilities.

We are here to examine the administration's legislative proposal which would greatly restrict access to that data on potential chemical accidents.

H.R. 1790 raises a number of complicated issues that deserve close scrutiny. It is unfortunate that this hearing was called only a few days ago, thus making it difficult for interested parties to thoroughly review this very complicated issue. Some of the witnesses requested by the minority were not invited or were not able to attend on short notice.

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I want to thank Chairman Bilirakis for his good-faith efforts in trying to accommodate, in the next week, the minority, and I think we will probably hear a little more on that later.

We have been receiving expressions of interest and concern from a number of important stakeholders who will not be represented here today. For example, the National Association of Attorneys General has expressed surprise and concern that H.R. 1790 would preempt State freedom of information and public record laws and could subject State officials and employees to criminal sanctions if they permit unauthorized access to worst-case scenario data.

Included with my opening statement, which I will submit for the record, is a list of agencies and organizations that have expressed interest in disclosure of worst-case scenario information.

I would like, also, Mr. Chairman, to highlight several of my concerns with H.R. 1790. The bill permits the EPA to provide the data on chemical accidents to State and local officials. However, volunteer firefighters and many members of local emergency planning committees are not considered State or local officials and would not be allowed to receive this crucial, to them, information, and to their communities, information from the EPA.

While many chemical companies are taking a responsible approach and will continue to share information directly with their local emergency planning committees, it is important to address this issue in the legislation.

Second, workers at chemical facilities have a significant stake in this matter. Public information on risk management plans and accident scenarios provide opportunity for workers who are on the front lines when accidents occur to learn more about the facilities where they work ahead of time and to discuss safety improvements with their employers. H.R. 1790 would great hamper this exchange.

Furthermore, if the concern is for terrorist attacks on chemical facilities, H.R. 1790 should contain substantive measures to encourage chemical facilities to reduce hazards and increase security.

I recommend to deal with that consideration a proposal by my colleague, Mr. Waxman, along these lines.

Along with my opening statement, Mr. Chairman, I request unanimous consent to submit three letters to the record. The first dated March 25 of this year is from Mr. Dingell, Mr. Klink, and me, to David Walker, the Controller General of the GAO.

Mr. BILIRAKIS. Without objection.

[The information referred to follows:]

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
March 25, 1999

The Honorable DAVID M. WALKER
Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

DEAR COMPTROLLER GENERAL WALKER: Last month, the Committee on Commerce held a hearing entitled "Internet Posting of Chemical 'Worst Case Scenario' Data: A Road Map for Terrorists?" The hearing focused on 112(r) of the Clean Air Act, which mandates that approximately 66,000 facilities handling dangerous chemicals are required to file with the Environmental Protection Agency (EPA) by June 21, 1999, a risk management plan (RMP) containing an off-site consequences analysis—or "worst case scenario"—that could result from the release of those chemicals. The

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scenarios will contain the amount of the chemicals on each site and the potential effects of a total release both inside and outside the facility. The RMP will also include a prevention and a response program. When Congress passed this provision in 1990, its stated purpose was "prevent the accidental release and to minimize the consequences of any such release..." P.L. 101-549 112(r)(1).

On the day before the hearing, Chairman Bliley held a press conference. He described the plan as a "reckless" move and an "emerging national security threat" that would result in terrorist bombings of chemical facilities and said that he would introduce legislation to address with his concerns within the next few weeks. Senator Inhofe, who held a hearing recently, has also indicated that he is considering legislation that would restrict dissemination of this information.

While there may well be reason for concern, there were also sound reasons for congressional action in 1990. Congress required that the RMPs be made available to the public to encourage the public to work with the facilities to create an effective response plan, mitigate any potential effects and reduce the amount of dangerous chemicals on site. Accidental chemical releases are a major health and safety problem and economic cost in the U.S. Every year, more than 250 people—mostly workers and first responders—die in chemical accidents. According to the Chemical Safety and Hazard Investigation Board (CSB), "Commercial chemical incidents occur tens of thousands of times each year, often with devastating and exorbitantly expensive consequences." Another 2,300 persons are injured, many seriously. These accidents occur "all over the country, in every state, on railways, highway and waterways, and in all kinds of industry, government and commercial facilities. During the period 1987-1996, chemical incidents were recorded in 95% (3,145) of the nearly 3,300 United States counties." Approximately one-third of the U.S. population, or 85 million people, live within five miles of a regulated source.

At our hearing, some witnesses testified that, although the public had the right to know the worst case scenario and assist in efforts to reduce the risk of chemical accidents, they should not have access to this information on the Internet because terrorists might use the information to attack chemical facilities. Several of them cited a "security study" funded by the EPA as supporting their position that the information would result in increased risk of terrorism at chemical facilities. However, that study, which apparently was never completed, appears to have serious methodological errors that cause us to question any reliance on its conclusions by EPA or the Congress.

Enclosed is a staff memorandum to us raising numerous questions about the study that we are referring to the General Accounting Office (GAO) for review. These include (1) a failure to establish the required baseline risk of attack and then quantify the incremental increase, if any, of releasing the worst case scenario; (2) the use of questionable methodology throughout the study; (3) the claim that risk of death in chemical facilities by terrorist action equals the risk of death by accidental releases in those same facilities, even though not a single person has ever died from terrorist causes in a chemical facility while dozens die every year from chemical accidents; and (4) the attempt to demonstrate potential risk by citing an alleged incident of chemical facility terrorism that has been publicly known since 1991 to have been an insurance scam, not a terrorist attack.

By this letter, we are requesting that GAO review the study and address the questions listed in the attachment to the staff memorandum. If your staff has any questions or would like to discuss this further, please contact Edith Holleman, Commerce Committee minority counsel, at (202) 226-3407.

Sincerely,

JOHN D. DINGELL, *Ranking Member,*
Committee on Commerce

RON KLINK, *Ranking Member,*
Subcommittee on Oversight and Investigations

SHERROD BROWN, *Ranking Member*
Subcommittee on Health and Environment

Enclosure

The Honorable Tom Bliley, Chairman
Committee on Commerce

The Honorable Michael Bilirakis, Chairman
Subcommittee on Health and Environment

The Honorable Fred Upton, Chairman
Subcommittee on Oversight and Investigations

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March 25, 1999

MEMORANDUM

TO: The Honorable John D. Dingell, Ranking Member; The Honorable Ron Klink, Ranking Member, Oversight & Investigations Subcommittee; The Honorable Sherrod Brown, Ranking Member, Health & Environment Subcommittee

FROM: Commerce Committee Democratic Staff

SUBJECT: Public Dissemination of Risk Management Plans

On June 21, 1999, approximately 66,000 facilities which handle dangerous chemicals and inflammables are required to file a risk management plan (RMP) with the Environmental Protection Agency which by law must be made available to the public. The plans are expected to encourage the facilities and the public to work together to more safely handle these chemicals. Included in each plan is a "worst case scenario" or off-site consequences analysis (OCA) which attempts to predict the extent of impact of a release of these chemicals. Section 112(r) of the Clean Air Act, which requires the filing, was a compromise which allowed industry to avoid mandatory regulation of these chemicals in exchange for full disclosure.

Under "e-FOIA" provisions passed in 1996, EPA had intended to place all of this information on the Internet so that the public would have full access to it. However, in 1997, the Accident Prevention Subcommittee of the Clean Air Act Advisory Committee, at the behest of the Chemical Manufacturers Association and the Federal Bureau of Investigation, requested a study to determine whether the inclusion of the worst case scenario information on the Internet would increase the risk of a terrorist attack on chemical facilities. ICF Consulting, one of EPA's support contractors, contracted with Aegis Research Corporation to do the study. A study outline was provided, and Aegis was specifically instructed to quantify the increased risk.

As far as we can tell, Aegis never provided a final product as required by the contract. The study outline was not followed. The baseline risk varied from section to section; the methodology was unclear in the draft report. The report was not peer-reviewed either outside or inside EPA, and it appears that its author continued to do manipulations of his model after his submission to EPA. These deficiencies are described more fully below.

Moreover, agency officials and members of the Accident Prevention Subcommittee have told staff that the report was not credible. A May 1998 letter from the ICF Consulting's senior vice president stated that Aegis Research used a "subjective scoring system" to evaluate risk, and that its approach is "not susceptible to empirical validation in its present application."

The contractor's senior vice president proceeded to conclude that it would be "grossly inappropriate" to use the relative risk projections in the study to question the merit of EPA's plan to make the RMP data available on the Internet for the following reasons:

1. "The significance of relative risk, in the absence of a measure of absolute risk, is unknown."
2. Any potential increases in terrorist risk "must be evaluated in transposition with the overall reduction in risk brought about by virtue of the dissemination of information to the public at large—I am absolutely convinced that the latter effect overwhelmingly outweighs the former."

Based on his experience with the Emergency Planning and Community Right-to-Know Act, he further stated to EPA:

> *I know of no influence that motivates industry leaders to reduce the risks attendant to their plant operations anywhere near comparable to knowledge that their workers and their neighbors are well informed about those risks.* (emphasis added)[1]

The stated purpose of the report was to quantify the incremental change in risk of a terrorist incident at a chemical plant if the "worst case scenario" under Section 112(r) of the Clean Air Act were placed on the Internet. This incremental change was to be calculated by establishing a baseline risk resulting from similar information obtained from other Internet sources and through other government data bases. If the incremental risk of a terrorist incident based on Internet distribution was determined "significant," the contractor was to compare the risks of other means of public distribution. Aegis was also to compare the potential "cost" of putting the information on the Internet versus the potential "benefit" in reducing chemical accidents.

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[1] Letter dated May 1, 1998, from Howard Dugoff, senior vice president, ICF Consulting Group, to James Makris, director, Chemical Emergency Preparedness and Prevention Office, EPA.

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A review of the study, with its uncertain methodology, and the comments of Subcommittee members, indicate that the contractor was unable to answer the questions posed. Numerous errors and questionable methodology and conclusions—too many to outline here—are immediately evident. For example, in the draft study, the baseline risk was not the risk of a terrorist event at a chemical facility based on currently available public information, but what the contractor arbitrarily decided was the risk of an American dying in the terrorist bombing of a building. The methodology for calculating this risk was inaccurate at best. It resulted in the unsupportable conclusion that more people will die every year in terrorist bombings than in chemical accidents. This calculation became, however, one of the critical elements in the Chemical Manufacturers Association' argument against putting the Risk Management Plans on the Internet.

How did Aegis draw this conclusion? Because there was no Internet-related chemical facility terrorism from which to develop a baseline,[2] Aegis decided to use the bombings at the World Trade Center and Oklahoma City Federal Building—both public buildings with free access which are not comparable to private chemical facilities. By taking the number of deaths in these two incidents (six in 1993 and 167 in 1995) and dividing them by seven, Aegis made the totally unsubstantiated assumption that *every seven years*, 173 people die in bombings of buildings, for an average of 25 persons per year.[3] The baseline chosen for death by chemical "accidents" was 20 deaths per year. There was no identified source for this number, and it was admitted to be a "soft" number. The contractor was then able to conclude that the risk of being killed by a terrorist bomb in a building—although minuscule—is nonetheless greater than that of being killed in a chemical release accident.[4]

However, according to the Chemical Safety Board, from 1987 through 1996, an average of 33 persons were killed each year in "fixed facility" chemical accidents.[5] When that number is used in Aegis' formula, and the bombing deaths are averaged over the same 10-year period which is still a questionable assumption—a different conclusion is reached. It becomes almost twice as likely for Americans to die in a chemical release accident than in a terrorist bombing of a *public building*. If the same ten-year period included actual deaths caused by terrorist bombings of chemical handling facilities, the baseline would be zero for death by bombing, compared to the much greater, documented risk of death caused by chemical releases.

Then, apparently in mid-study, Aegis decided the incremental risk it was quantifying was the risk of easily selecting a chemical facility as a target, not the risk of an actual attack. Aegis assumed that the terrorist's objective was to select a chemical facility "to be used as a chemical weapon in carrying out an NBC [nuclear-biological-chemical] attack *against the United States.*" (emphasis added)[6] Then, using some unexplained selection process and ranking system, Aegis evaluated nine factors and determined that the "incremental increase" in risk was ten times higher with availability of all of the RMP/OCA data on the Internet—even though it was supposed to consider only the worst case scenario data.

In its report, Aegis acknowledged that the essential elements in carrying out a terrorist attack could not be obtained from the RMP/OCA filings; These are: 1) knowledge of security; 2) knowledge of chemical location; and 3) knowledge of facility layout. However, since it was no longer quantifying the risk of actual attack, the fact that the terrorist would not obtain the necessary information from the RMP/OCA to actually carry out an attack apparently was not deemed significant.

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[2] Since 1992, the military intelligence community has been writing about the possibility of terrorists using the already available "facility environmental files" as "target folders" (see, Walker, K. "Enviro-Terrorism" SARA Title III and its Impact on National Security," *Military Intelligence*, July-Sept. 1992, p. 20), there has been only one potential "terrorist" plot that has targeted a chemical facility in the United States. It was planned by a small, local group of poverty-stricken Klu Klux Klan members who were going to blow up a refinery tank as a diversion while they robbed an armored car. They used none of the publicly available information to select their target, but relied on their own observations and knowledge of the security and chemical contents of the refinery. The attack was not carried out because one of the conspirators contacted the Federal Bureau of Investigations. They also did not have the necessary explosives.

[3] It is unclear why seven years was used except that the desired result was obtained. No reputable statistician would select arbitrarily two end points and extrapolate mortality rates without some stated justification.

[4] No attempt was made to control for deaths per number of persons employed in the various facilities or by numbers of persons who could be expected to have access to those facilities.

[5] "The 600K Report," Exhibit C, "Chemical Incidents, Deaths, Injuries by Type, 1987-1996." The majority of deaths result from transportation-related chemical incidents.

[6] This scenario would take the threat out of the domestic-amateur terrorist realm that the Subcommittee was most concerned about into state-sponsored international terrorism even though the Subcommittee had previously concluded that terrorists of that type already knew how to obtain this information.

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Because of the significance of this report to the debate thus far, and because of ongoing concerns about the EPA's use of studies, we recommend further analysis by the General Accounting Office. Attached is a list of questions that the General Accounting Office should answer about the Aegis study.

ATTACHMENT

1. From the various EPA and Aegis documents reviewed by staff, it is difficult to know exactly what incremental "risk" Aegis was expected to quantify or if the definition changed in the middle of the study. Was the Aegis study designed to quantify:
   (a) the increased risk of death at a U.S.-based chemical facility by terrorist activities that would result from the posting of worst case scenarios on the Internet versus the baseline risk resulting from similar information already available from the Internet sources?
   (b) the increased risk of a terrorist attack on a U.S.-based chemical facility based on the posting of worst case scenarios on the Internet versus the baseline risk resulting from similar information already available from other Internet sources?
   (c) the increased risk that the use of worst case scenario information on the Internet as part of the decision-making process used by a terrorist would result in a chemical facility target as opposed to other targets versus the baseline risk already posed by similar information already available from other Internet sources?
   (d) the increased risk of a terrorist who has already determined to target a U.S.-based chemical facility to use the worst case scenario on the Internet to choose a specific target compared to the baseline risk resulting from similar information already available on the Internet?, or
   (e) some other undefined risk?
2. What was the baseline risk number?
3. What methodology did Aegis use to quantify the selected risk? Was it generally accepted methodology for risk measurement? What is the band of confidence around the results?
4. What documentation did Aegis use to conclude that the "Adversary Strategy" developed by the U.S. Special Operations Command provided the appropriate decision-making grid for either domestic, amateur or foreign terrorists?
5. What is the basis for the "probability of completion" numbers Aegis used to evaluate different sources of information? What mathematical formula did Aegis use to conclude that posting worst case scenarios on the Internet would provide the most assistance to terrorists who wanted to select a chemical facility as a target? Is this a generally accepted methodology?
6. Recently, the Chemical Safety and Hazard Investigation Board (CSB) issued a report based on reviews of five different federal databases which concluded that, on average, over 250 people die every year in chemical release accidents. Of that total, 33 die in "fixed facility" chemical accidents. CSB does not believe that these numbers represent all of the persons who die every year in chemical accidents. On what data did Aegis base its projection that only 20 people are killed annually from chemical release accidents?
7. What was the basis for Aegis dividing the number of persons killed in the World Trade Center bombing and the Oklahoma City bombing by seven and concluding that an average of 25 people die from terrorist bombings every year? Is this a credible methodology to obtain an annual risk of death by terrorist bombs? What is the normal method used to calculate future risk for an event which has occurred only twice in the last 100 years?
8. In a study that purports to quantify the risks of terrorism at private chemical facilities and refineries, is it appropriate to use as a baseline terrorist-caused deaths in public buildings?
9. When Aegis wrote its report, was it aware that the 1991 alleged "terrorist" incidents at chemical facilities that it cited was not the work of a terrorist, but an insurance scam by the owner of the chemicals which was well-reported in the press? If not, why not?
10. It appears that Aegis began with the assumption that a terrorist, despite all the other available targets such as easily accessible public buildings, highways and public transportation would select a private chemical facility as a target. For example, it stated that "[t]aken together, the primary utility of the unrestricted RMP and OCA data to a terrorist emerges from the capability to scan across the entire country for the 'best' targets." On what basis did Aegis make this as-

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sumption that private chemical facilities would be on the list of "best" targets for either local or international terrorists?

11. Aegis stated that a key knowledge element to planning a terrorist attack was determining facility security measures, information available only through insider knowledge or observation of a particular facility. The RMP/OCA report does not provide this information. Did Aegis evaluate the risk of a terrorist attack with and without this key element?
12. Was a final draft of the study ever received from Aegis?
13. Did anyone inside or outside of EPA peer-review the Aegis study or its model?

Mr. BROWN. Thank you, Mr. Chairman.

The second is dated May 19, of 1999. It is from William Pound, executive director of the National Conference of State Legislators, to me.

And the third is dated May 18, 199. It is from Heidi Heitkamp, attorney general of North Dakota, and my attorney general, Betty Montgomery, of Ohio, on behalf of the National Association of Attorneys General, written to the chairman—to Chairman Bilirakis.

And the following have expressed interest in the issue of disclosure of worst-case scenario information and this is a list that I would also like to submit for the record. I ask unanimous consent——

Mr. BILIRAKIS. Without objection.

[The information referred to follows:]

NATIONAL CONFERENCE OF STATE LEGISLATURES
May 19, 1999

The Honorable SHERROD BROWN
Ranking Member
Health and Environment Subcommittee
House Commerce Committee
201 Cannon House Office Building
Washington, DC 20515

RE: H.R. 1790, The Chemical Safety Information and Site Security Act of 1999

DEAR REPRESENTATIVE BROWN: I understand that the Subcommittee on Health and the Environment of the House Commerce Committee is holding a hearing on H.R. 1790, the Chemical Safety Information and Site Security Act of 1999. I respectfully request that you hold another hearing in order to give the National Conference of State Legislatures and other state and local government officials an opportunity to comment on H.R. 1790.

After a quick review of this bill, I have determined that it contains provisions that preempt state law. Although NCSL understands the bill's intent to protect human health and the environment, I feel that we need time to thoroughly review this bill to determine the extent of the preemption. We would like to work with you to craft the best possible language to achieve the goals of this bill without sidestepping state law.

Please do not hesitate to contact Michael Bird or Melinda Cross at (202) 624-5400 should you have any questions.

Thank you for your attention to this matter.

Sincerely,

WILLIAM POUND,
Executive Director

Mr. BROWN. [continuing] and then thank the chairman for his patience.

Mr. BILIRAKIS. Without objection.

Mr. BROWN. Thank you.

[The information referred to follows:]

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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
May 18, 1999

Honorable MICHAEL BILIRAKIS
Chairman
Subcommittee on Health and the Environment
United States House of Representatives
Washington, DC 20515

DEAR CHAIRMAN BILIRAKIS: We have just learned that your Subcommittee will hold a hearing on May 17 on the "Chemical Safety Information and Site Security Act of 1999." Further we understand that similar language was added to S. 669, which has been favorably reported from the Senate Committee an Environment and Public Works.

We are surprised by this legislation that would preempt state FOIA/public record laws and subject state officials and/or employees to possible criminal sanctions. Before action occurs on such a sweeping proposal, there should be extensive consultation with Attorneys General, Governors, legislators and other affected individuals. We have not had time to review the details of this proposal. While the goals of this proposed legislation—to prevent unnecessary risks to public safety that might result through the broad electronic dissemination of off-site consequence analysis (OCA) data—may be laudable, states should be fully involved in the development of any legislation that would preempt state laws and subject state officials to possible criminal penalties. Concern about misuse of OCA data need to be balanced with public access to information about potential releases of hazardous substances in their communities. This is a delicate balance that will require extensive consultation with the states.

A representative of the Association was not invited to testify on Wednesday, nor could we at this late date. We therefore respectfully request that you schedule another hearing, inviting representatives of the National Association of Attorneys General and other state associations to testify, and that it serve as a beginning of an extensive, ongoing dialogue to resolve our concerns. Please contact Lynne Ross, NAAG's Deputy Director and Legislative Director at (202) 326-6054 if you or your staff have any questions.

Sincerely,

HEIDI HEITKAMP, *Attorney General of North Dakota*
Vice Chair, NAAG Environmental Committee

BETTY MONTGOMERY
Attorney General of Ohio

cc: Represontative Tom Bliley
Representative Sherrod Brown
Representative John Dingell
Attorney General Mike Moore

Mr. BILIRAKIS. Without objection, the opening statements, of course, of all members of the subcommittee will be make a part of the record. And for oral statements, let's see, Mr. Whitfield?

Mr. WHITFIELD. Thank you, Mr. Chairman. I will file my opening statement with the record, but I am pleased that you are holding these hearings on this important subject matter.

And I know that we have a panel of witnesses who have some real expertise in this area, so I simply look forward to their testimony, and want to thank you, again, for the hearing.

Mr. BILIRAKIS. I thank the gentleman.

Mr. Waxman, for an opening statement?

Mr. WAXMAN. Yes, Mr. Chairman; thank you for recognizing me.

We are going to receive testimony today from administration witnesses and others regarding H.R. 1790, the Chemical Safety Information and Site Security Act of 1999.

This legislative proposal was developed by Department of Justice, EPA, and the FBI over a very short timeframe. And, frankly, I am concerned that it raises a number of issues that have not been adequately considered. Most interested and affected parties have

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only learned of this proposal in the last few days and have not had an opportunity to review the proposal and to comment on it.

It is important that this subcommittee receive testimony from all affected parties before going forward, that is why I am concerned about the manner in which this hearing has been put together. The minority was given notice at the last possible moment, as were many of the witnesses. Some of the witnesses before us were not contacted by the subcommittee staff until Friday afternoon or Monday morning. This, of course, is Wednesday. And, oddly, some groups which have a direct interest in this issue, like the National Association of Attorneys General were not even invited. In fact there are no witnesses today representing the point of view of the States.

The threat of terrorism is one we should approach with the utmost seriousness. Historically, terrorists have focused their attacks on public buildings due to the symbolic value of attacking a Government entity. Regardless, we should limit the risk of terrorist attack whenever and wherever it makes sense to do so. And I am concerned about the approach of this bill.

I have to point out that since 1997, many of us have pressed for legislation so that the public would have a right to know about potential accidents in their communities. This bill would raise significant obstacles to informing the public about what might harm them in the neighborhood and the community in which they live.

This legislation could also make it significantly more difficult, if not impossible, to conduct the kind of studies that would help reduce the hazard of chemical facilities across the board.

I can tell that the administration has made efforts to ensure that all chemical safety information remains publicly available. This is critically important, and I don't believe any of our witnesses today will testify that the public should not have this information. I would vigorously oppose any effort to strip the public of their right to know about potential accidents in their communities. However, H.R. 1790 proposes the extraordinary measure of extending criminal penalties to State and local officers and employees who provide the public with information that is otherwise publicly available. Can you imagine that if you are a local employee and you get the information, if you tell the public about it, you can maybe go to jail? I am interested in hearing the administration's rationale for this unusual approach.

I think the subcommittee should take a step back and put the issue in perspective. So far, the debate has centered exclusively on public access to accident planning and prevention data. Well, I am concerned about restricting the availability of information regarding accidental chemical releases as a sole approach to addressing the threat of terrorist attacks on chemical plants. This approach may sacrifice the public's right to know, while ignoring more direct approaches to reducing the risks posed by terrorism.

The potential for terrorist attacks on chemical facilities deserves a more comprehensive approach—one which examines all aspects of the issue, including chemical plant security equipment and personnel and the value of establishing buffer zones between hazardous chemical operations and residential areas, schools, transportation routes, and other public centers. Only through such a com-

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prehensive analysis, can we identify the steps we need to take and their relative priority.

Site security measures may likely emerge as more important in reducing terrorist risk than information security measures. In other words, it may be more important where we site facilities that could pose a risk if they are the subject of a terrorist attack than keeping the public from knowing about the risks that they may be exposed to.

If past experience with right-to-know laws is any indication, when the public knows about dangers, it encourages chemical plants to adopt inherently safer practices which would reduce the hazard associated with these facilities to both terrorist attack and to accidents.

Mr. Chairman, on July 29, 1999, I wrote Attorney General Janet Reno and EPA Administrator Carol Browner regarding this issue, and I sent them draft legislative language for their comments. I am hoping the witnesses can address that. This draft language would seek to reduce the risk of terrorist attack on chemical facilities by directing the Department of Justice to convene a task force to perform just such a comprehensive analysis of the risk of terrorist attacks and to recommend necessary protective measures. I haven't received a response from them.

It is my hope that we can move in this subcommittee together on a bipartisan manner to address the risks associated with these chemical facilities. If members of the subcommittee are truly interested in addressing the threat of terrorism, we must take a comprehensive approach.

I would ask, Mr. Chairman, if we could have unanimous consent to put in the record my letter to Janet Reno with the proposal that I submitted to her?

Mr. BILIRAKIS. Without objection.

[The information referred to follows:]

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
April 29, 1999

The Honorable JANET RENO
Attorney General
Department of Justice
10th Street and Constitution Avenue, NW
Washington, DC 20530

The Honorable CAROL M. BROWNER
Administrator
U.S. Environmental Protection Agency
Washington, DC 20460

DEAR ATTORNEY GENERAL RENO AND ADMINISTRATOR BROWNER: I am writing to you regarding an important issue currently being debated in Congress and to request your views on the attached legislative language.

The Federal Bureau of Investigation has recently testified before Congress regarding the threat of terrorist attack on the nation's chemical facilities. I am concerned about this risk. Historically, terrorists have focused their attacks on public buildings due to the symbolic value of attacking a government entity. Setting that aside, limiting the risk of terrorist attacks is a prudent course of action.

Unfortunately, the debate so far has centered exclusively on public access to accident planning and prevention data. I am concerned that restricting the availability of information regarding accidental releases of chemicals as a sole approach to addressing the threat of terrorist attacks on chemical plants may sacrifice the public's right-to-know while ignoring more direct approaches to reducing the risks posed by terrorism.

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The issue of terrorist attacks on chemical facilities deserves a more comprehensive approach, one which examines all aspects of the issue, including chemical plant security equipment and personnel, the "hardness" of chemical operations against bombing attacks, and the value of establishing protective buffer zones between hazardous chemical operations and residential areas, schools, transportation routes, and other public centers.

Only through such a comprehensive analysis can we identify the steps we need to take and their relative priority. Site security measures may likely emerge as more important in reducing terrorist risk than information security measures. Additionally, if past experience with right-to-know laws is any indication, public disclosure will likely encourage chemical plants to adopt inherently safer practices which would reduce the hazard associated with these facilities to both terrorist attack and to accidents.

It would be very helpful to receive your views on the attached legislative language. This language would seek to reduce the risk of terrorist attack on chemical facilities by directing the Department of Justice to convene a task force to perform the comprehensive analysis discussed above, and to recommend the necessary protective measures. The legislation would then direct the EPA to implement those measures in consultation with the Department of Justice.

I appreciate your attention to this matter and look forward to receiving your comments.

Sincerely,

HENRY A. WAXMAN
Member of Congress

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[DISCUSSION DRAFT]

106TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend section 112(r) of the Clean Air Act to reduce the vulnerability of facilities covered by that section to terrorist attack, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Chemical Security Act of 1999".

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SEC. 2. AMENDMENT OF SECTION 112 OF CLEAN AIR ACT.

Section 112(r)(7)(A) of the Clean Air Act (42 U.S.C. 7412(r)(7)(A)) is amended by inserting "(i)" after "(A)" and by adding the following new clause at the end thereof:

"(ii) The Administrator shall promulgate final regulations within 24 months after the enactment of the Chemical Security Act of 1999 to establish such requirements as may be appropriate to reduce the vulnerability of facilities to terrorist attack and minimize the off-site consequences of such an attack, including, as appropriate, each of the following:

"(I) Requirements for site security equipment and security personnel.

"(II) Requirements which will ensure potentially hazardous operations are hardened against bombing attacks.

"(III) Requirements establishing protective buffer zones between hazardous chemical operations and residential areas, schools, major roads and transportation routes, and other public centers, including shopping centers and malls.

The Administrator shall develop requirements described in this clause in consultation with the Attorney General and based upon the report issued pursuant to clause (iii).

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"(iii) Not later than 30 days after the date of enactment of the Chemical Security Act of 1999, the Attorney General shall convene a task force to examine the issue of terrorist attack on chemical facilities composed of designees of the Director of the Federal Bureau of Investigation, the Administrator of the Environmental Protection Agency, the Secretary of State, the Secretary of Transportation, and other appropriate industry and public interest representatives. Not later than 12 months after the enactment of the Chemical Security Act of 1999, the Attorney General shall report to Congress on the vulnerability of chemical facilities to terrorist attack and the potential on-site and off-site consequences of such attack. The report shall also contain recommendations for reducing the vulnerability of facilities to terrorist attack and minimizing the off-site consequences of such an attack, including recommendations for requirements to be established pursuant to clause (ii). Such recommendations shall account for facilities which employ inherently safer technologies and practices.".

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Mr. WAXMAN. And, second, we have a letter from the U.S. Government Printing Office to the Honorable John H. Chaffee, regarding the extraordinary nature of the proposal that is before us. And I think it would be important to have that letter in the record.

Mr. BILIRAKIS. Without objection, that is made a part of the record.

[The information referred to follows:]

UNITED STATES GOVERNMENT PRINTING OFFICE
OFFICE OF THE PUBLIC PRINTER
May 12, 1999

The Honorable JOHN H. CHAFEE
Chairman, Committee on Environment and Public Works
U.S. Senate
Room 410, Dirksen Office Building
Washington, DC 20510

DEAR MR. CHAIRMAN: I am writing to express my serious concern over proposed language included in S. 880, providing for public disclosure of certain chemical hazard information compiled by the Environmental Protection Agency (EPA). This language would impose restrictions within Federal depository libraries on the public's use of this information. The Government printing Office (GPO) and its Federal Depository Library Program (FDLP) wants to be as supportive as possible of the Senate's intent to provide for public access to this important information. However, the restrictions proposed for S. 880 appear to me to be fundamentally antithetical to the mission and established administrative practice of the FDLP, which is to promote comprehensive and equitable public access to Federal Government information without limitations on its use. Moreover, the proposed restrictions would be costly and administratively burdensome to enforce.

Federal Depository Program. Under the FDLP, Government publications, "except those determined by their issuing components to be required for official use only or for strictly administrative or operational purposes which have no public interest or educational values and publications classified for reasons of national security, shall be made available through the facilities of the Superintendent of Documents for public information." 44 U.S.C. 1902. The Superintendent, an officer of the Government Printing Office (GPO), distributes the publications to libraries designated as Federal depositories according to law, 44 U.S.C. 1905. Depository libraries are required to "make Government publications available for the free use of the general public." 44 U.S.C. 1911. The Superintendent of Documents periodically inspects the libraries to "make a firsthand investigation of conditions for which need is indicated," primarily to assure that public access is being maintained, 44 U.S.C. 1909.

GPO's responsibility for the operation of the FDLP is primarily ministerial. As long as Government publications requisitioned from GPO in print or electronic form (or produced by other agencies and made available to GPO) meet the requirements established by 44 U.S.C. 1902, GPO distributes the publications to the libraries. GPO makes Government information available to the libraries in electronic format via the distribution of CD-ROM copies and dissemination by *GPO Access,* GPO's online Internet information service. Once in the libraries, GPO requires that the publications be made available to the public free of charge and without further restriction. Beyond inspecting the libraries to ensure their compliance with statutory requirements, GPO does not impose any further requirements on the libraries. GPO does not regulate how the public uses Government publications. The libraries bear the burden of housing the documents and making them available for use, including providing staff assistance to public users.

Problems with Proposed Restrictions. The restrictions that have been proposed for S. 880 would be problematic for several reasons:

- There is a proposal to prohibit the copying of certain EPA information, whether made available in paper or electronic form, in depository libraries. GPO has virtually no experience with administering such a restriction. To the best of my knowledge, of the thousands of publications distributed each year, there is only one case in which the FDLP has put out a notice restricting printing out or photocopying a Government information product—the Foreign Broadcast Information Service, currently issued on CD-ROM. The restriction is due to copyright limitations on the material in this publication, not security considerations. Enforcement of this restriction relies on notice being provided to users by librarians. Otherwise, Government publications whose use is restricted because they

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are considered "for official use only or for strictly administrative or operational purposes which have no public interest or educational value" or information that is "classified for reasons of national security" are not included in the FDLP. It is not clear how enforcing the prohibition on copying contained in S. 880 would be carried out—by GPO, or by depository librarians themselves.

- There is a proposal that appears to require GPO to ensure that risk management plans made available in electronic form do not provide an electronic means of ranking stationary sources based on off-site consequence analysis information. Since the EPA is the issuing component for this information, GPO would not be able to "ensure" that the prohibited capability is not made available, particularly if the electronic form is put up on the Internet by the EPA itself and not via *GPO Access*. If it is made available for dissemination to depository libraries via *GPO Access*, GPO would not be able to restrict the ability of users to download and manipulate the ranking data other than to decline to disseminate the information altogether. Requiring GPO to edit information selectively so as to prevent public access would be beyond the scope of responsibilities contemplated by the depository library provisions of Title 44 and a century of administrative practice in the FDLP.
- There is a proposal to authorize appropriations to the Public Printer to implement these restrictions. Funding for the FDLP is provided by the annual Salaries and Expenses Appropriation of the Superintendent of Documents, under the Legislative Branch Appropriations bill. The Salaries and Expenses appropriation has remained relatively flat in recent years, and GPO has been in a downsizing mode in terms of authorized full-time equivalent employment (FTE's). It is not clear whether this authorization would provide additional funding to GPO, or whether it would simply impose an additional requirement on the limited resources currently funded by the Salaries and Expenses Appropriation.
- There is a proposal for the Administrator of the EPA to collect and maintain records "that reflect the identity of individuals and other persons seeking access" to the information. It appears that this would require the GPO to collect and maintain these records, either directly or by requiring depository librarians to perform it. GPO does not collect information on individuals utilizing depository collections and does not have the administrative ability to do so, and in my view this requirement would be vigorously opposed by the library community. Librarians are staunch supporters of user privacy and as a result would be very unlikely to cooperate in this requirement. Moreover, it would be extremely difficult and costly to administer. Thousands of individuals utilize depository collections each week. Tracking those who use the EPA information would impose a significant administrative burden.
- There is language stating that an officer or employee of the United States, or an officer or employee of a State or local government, who knowingly violates these restrictions may be punished under the provisions of Title 18. As Federal employees, GPO personnel working in the FDLP could be held liable under this provision. Since the FDLP and its statutory authorizing language do not contemplate the administration of restrictions on the public's use of Government information distributed to the libraries, there is genuine risk of inadvertent liability for FDLP employees under this provision. To the extent that depository librarians are employees of State-run universities or public libraries, there is a similar risk of liability.

In fact, the proposed restrictions, including the requirement to collect names and the provisions for legal liability, are very likely to be strong disincentives for depository librarians to participate in making the targeted EPA information available to the public. By law, the vast majority of depository libraries are "selective" depositories, meaning they choose from among the items made available by GPO according to the needs of their users. Of the more than 1,350 libraries in the FDLP, only 53—the regional depositories—accept everything distributed by GPO. The restrictions proposed for S. 880, the requirement to take names, and the possibility of legal liability would most likely result in very few depository librarians selecting the EPA information, thus undermining the intent of this legislation to use the FDLP as an effective vehicle for making the information available to the public.

The proposed language for S. 880 clearly states that the EPA information may be made available to certain officials, such as State or local government officers or employees, for "official use." This specific designation, accompanied by restrictions on public access and use, strongly implies that the EPA materials do not meet the criteria for free access to Government information. As I stated, GPO will be as supportive as possible of the Senate's intent to provide public access to this important information. However, in my view the restrictions on public access and use proposed in S. 880 would actually have a negative impact on public use of this information.

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If there is any way that I can assist you further in this matter, please do not hesitate to contact me on 512-2034.

Sincerely,

MICHAEL F. DIMARIO
Public Printer

cc: The Honorable Max Baucus
Ranking Member
Committee on Environment and Public Works
U.S. Senate

Mr. BILIRAKIS. Before the Chair yields to the chairman of the full committee, Mr. Bliley, I wish to announce that we will have a further hearing on this subject next Wednesday afternoon, consistent with our discussions.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Mr. BILIRAKIS. Mr. Bliley, for an opening statement.

Chairman BLILEY. Mr. Chairman, I would ask unanimous consent to insert my opening statement in the record.

Mr. BILIRAKIS. Without objection.

Chairman BLILEY. I would like to respond to the gentleman from California, Mr. Waxman, on this issue of the timing of this hearing.

Months ago, we contacted the administration about this problem. We asked them to come forward with recommendations for a legislative solution because we are faced with a June 21 deadline. They did not come forward until 12 days ago. Consequently, we had to schedule a hearing quickly because we have to attempt to move a piece of legislation through this subcommittee, through the full committee, through the Rules Committee, through the floor, through the Senate, and get it to the President by June 21. Given the fact, further, that the Congress, this House, will be out of session from next Thursday night, May 27, until June 8, this is a Herculean task, and that is why we had to schedule this hearing when we did.

And I thank the chairman for yielding me the time, and I yield back.

[The prepared statement of Hon. Tom Bliley follows:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you, Mr. Chairman for holding this important hearing on the Administration's proposal to address the national security concerns that would result if we do not act by June 21st to stop widespread posting of electronic worst-case scenario chemical release data.

I first raised this issue last September, when the June 21st deadline for filing the worst-case scenarios was nine months away. In October, EPA agreed that posting this information on the Internet raised national security concerns and that EPA would not put worst-case scenarios on its own website. EPA was silent about giving out the electronic database to third parties. In February, before this subcommittee, EPA said that it opposed third parties having the worst-case scenario information in electronic format. EPA also said that it would solve that problem. Finally, some 12 days ago, the Administration proposed a solution, and I introduced that proposal by request.

The Administration's proposal seeks to prevent the widespread circulation of electronic worst-case scenarios data. EPA, FBI and DOJ all agree that would pose a threat to national security. The proposal also seeks to ensure that local officials have the risk information they need to plan and protect citizens, and that individuals have access to information concerning the risks associated with local chemical facilities.

Like many legislative proposals, however, there are some issues that require fine tuning. For example, we must ensure that citizens who perform public duties, such volunteer firefighters and the LEPC members, have access to the data they need. The criminal liability provision of this bill need careful review. The Committee must

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examine potential restrictions on library materials. These flaws can and should be fixed, let us work together to address these issues.

Let me stress that no one here is advocating that we keep the worst-case scenario information locked up or away from those communities nearby chemical facilities. I, for one, certainly support making sure that these communities have access to all information about the risks associated with their facilities. But we also must ensure that the way this information is provided does not end up harming the very people that Congress intended to protect. While no plan is foolproof, we certainly shouldn't do anything to make it easier for those who want to harm our nation and our neighbors.

Because we *can* achieve both of these goals without sacrificing the other, I believe we *must* achieve both. The penalty for inaction is that, on June 21st, our national security will be compromised by the release of a national, electronic targeting tool available for use by terrorists from anywhere in the world.

I look forward to hearing from our distinguished panelists.

Thank you, Mr. Chairman.

Mr. BILIRAKIS. And I thank the gentleman.

Mr. Dingell, for an opening statement?

John, please pull the microphone closer.

Mr. DINGELL. As you will note, we have addressed the concerns of the committee with regard to section 112 of the Clean Air Act in February of this year. At that time, I urged that we carefully examine legislation proposed in this matter.

At that time, my good friend, Mr. Bliley, the chairman, had stated his intention to introduce legislation which he has now done at the request of the administration.

We are here today to examine the legislation, but I note we are missing a number of witnesses whose insight I believe would be valuable to the subcommittee. In fact, I believe their views are essential. I am strongly urging that State witnesses such as the National Association of Attorneys General, that have not been invited, should be invited to testify on the preemption State FOIA and public records laws. These witnesses I believe have important interests and concerns in provisions that may affect State issues and State officials, with regard to possible criminal sanctions.

I believe that we need to have experts on constitutional law who may answer my questions pertaining to the first amendment and due process concerns. I believe strongly that we need to have a Freedom of Information Act expert or at least a Privacy Act expert here to discuss important components of statutes cited in this bill.

It is my understanding that the administration has obtained the view of virtually no outside stakeholders in developing the proposal they sent to the Speaker last week. In the short time since the administration's language saw the light of day, few people outside the administration have had the opportunity to scrutinize it. The bill has not been printed since my good friend, Mr. Bliley, introduced it last week.

Mr. Chairman, this is not a simple bill; it is complex, and it raises a host of issues in its different provisions.

I am intrigued by the provision that allows the Administrator of the EPA to produce guidance which would set forth the parameters of criminal sanctions. This is probably an extraordinary section. By the provisions of this bill, the guidance is not judicially reviewable, nor is it subject to public review and comment. The rationale we have heard for this mechanism of imposing criminal sanctions is simply expediency. Indeed, that is a major concern of mine, and I believe it is one that will be shared throughout the committee.

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Are we in such a hurry to forestall the hypothetical terrorists that we must compromise the rights of our citizens? And to what degree? And, why?

Our citizens are entitled to understand exactly what actions are punishable by imprisonment. Librarians, firefighters, police officers, or even State and local officials cannot easily negotiate a system of EPA-guidance documents. As a matter of fact, knowing EPA, they will be obscure and will be drafted to best suit the concerns of EPA and not the concerns of the public at large. In fact, people in the hinterlands, hire K Street lawyers to locate these gems in the bowels of EPA. Sometimes, I might note, they are successful. Members on both sides of the aisle have often complained that these documents are not binding on any party. EPA will tell you so, that these kinds of documents have had enormous impact on American industry, and the American economy.

This bill proposes we impose criminal sanctions in this way. I am curious to know, what witness today can give us any examples of Congress having previously taken such an action. This bill goes to great lengths and great detail to lessen the possibility that information vital to public safety may, nevertheless, be used to harm the public. The truth is, we cannot predict the intent of all who view this information, no matter how we craft the legislation.

We have not documented any examples of terrorism associated with this type of information, but we cannot say that it will never happen. But we have documented examples of chemical instances, far too many—estimates that there are some 60,000 chemical and industrial incidents which occur each year. Between 1987 and 1997, many of these incidents resulted in death, and we can predict with great certainty that there will probably be more deadly instances of such events in the following year.

Mr. Chairman, I do not deem the assurance of public safety an easy task, but it is our task to balance the public's right to understand the risks to the community and to address, to prepare for, and to reduce these risks, with the law enforcement goal of protecting the public from undue harm. I understand that this bill was intended to strike that balance, but I believe that it creates some new problems and possibly new precedents that we must be very careful to consider.

I am aware of the fast-approaching deadline for submissions of the information required by section 112. That does not compel me, however, to act without full understanding of a legislative proposal, particularly one which imposes criminal sanctions upon the recommendations of EPA in a guidance document. We should hear from the people who have a large stake or great expertise in the matter. We should allow them to participate in the process to improve this bill, and we should act only when we are confident that this legislation which we enact allows for public disclosure in an appropriate fashion which is consistent with the appropriate magnitude of the risk.

I would hope, Mr. Chairman, that we will have appropriate additional hearings to hear the concerns of the Attorneys Generals and the others that we have suggested to the Chair. I believe that that is very important for the handling of this legislation in a proper fashion.

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And I would note that the minority has a chapter—rather, has a rule 11—letter on the desk, which we will be withholding if we receive proper assurances from the Chair that we would be having adequate opportunity to present the necessary witnesses and to gather the necessary information on this very difficult and technical question.

Mr. BILIRAKIS. The Chair has already publicly stated that that will take place next Wednesday afternoon.

The Attorney Generals, by the way, were invited to come testify, through the National Attorneys General Association. They were not able to make it here today, but certainly we agree that it is significant that we hear what they have to say.

Obviously, this deadline was imposed upon us; it was not of our doing, nor of the minority's doing. And so that is what has basically resulted in——

Mr. DINGELL. I want the Chair to know that my comments are——

Mr. BILIRAKIS. [continuing] trying to put this on the fast track.

Mr. DINGELL. I want the Chair to know that my comments are made with respect and affection.

Mr. BILIRAKIS. Thank you, sir.

Mr. DINGELL. And that I intend to indicate no wrongdoing on the part of the Chair or any member of this committee. But it is very important we receive the necessary testimony——

Mr. BILIRAKIS. Yes, sir.

Mr. DINGELL. [continuing] and understanding of what it is we are about to do.

And, again, I do not allege that this is wrongdoing on the part of the Chair or my colleagues in the majority. But it just is very important, because, after all, we are here dealing with the EPA.

Mr. BILIRAKIS. The gentleman's points are well taken. This Chair yields to Mr. Bryant, from Tennessee.

Mr. BRYANT. Thank you, Mr. Chairman.

I, too, join in expressing my appreciation for your calling this hearing and also indicating you will hold a second hearing next week to ensure that all the stakeholders have at least the opportunity to make a presentation before this committee.

I look forward to these panels of witnesses today, adding to what already we know about this very important issue.

The concern I think we all share in this room is public safety in this situation. And it seems to be expressed primarily from the standpoint of public safety from accidents through just normal conduct of business, but there is a very big issue, also, in that area of public safety, with the potential for terrorism. As we have seen in this country in a fairly recent series of events, this is something that didn't happen too often in the past, but, unfortunately, we have to consider it is a very real possibility today.

I know since our last hearing in February, various agencies, including the FBI and the EPA and the Department of Justice and others, have been working very hard to strike that balance, in terms of public safety between accidental situations and the public's right to know, and protecting the public through law enforcement against intentional acts of terrorism, and the very serious harm that that can do to public safety. They have been work-

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ing at that, trying to find a balance there, and I believe and understand this bill that Chairman Bliley has submitted is a result of that.

As has been said by our chairman in this committee, this is not a perfect bill—and I think he was quoting someone else when he said that—I would agree that there are some very important details that need to be worked out, and I simply look forward to the addition of your very valuable testimony today in ironing out those details, and us reaching a final bill very shortly.

We are under a—not only a public safety dilemma, but we are also under a very important time dilemma, also.

Thank you, Mr. Chairman.

Mr. BILIRAKIS. I thank the gentleman from Tennessee.

Mr. Pallone, for an opening statement?

Diana was here first—Ms. DeGette.

Ms. DEGETTE. Thank you, Mr. Chairman.

Mr. Chairman, I am very happy to welcome back Tim Gablehouse, who is an attorney from Denver, and has testified on this subject before this committee before. As you know, Tim is a member of the Colorado Emergency Planning Commission and serves as chair of the Governor's Interagency Advisory Group on Hazardous Materials. He is also a member of the Clean Air Act Advisory Subcommittee on Accident Prevention, and I think he will be a good witness today on the State perspective.

I also look forward to the hearing next Wednesday and hope we can get some of these other groups in.

As I stated in our previous hearing on this issue in February, I believe the position taken by the Department of Justice in the legislation before us today is a solution in search of a problem. Planning for a response to a chemical incident demands the communication and cooperation of the impacted public, first response agencies, facilities, and local emergency planning commissions. Yet, this bill would criminalize that process.

I am concerned about this legislation because I believe it may unintentionally compromise a community's right to know worst-case scenarios. This legislation includes provisions that have unclear, perhaps, unintentional, and, certainly, untold consequences on libraries, State and local officials, and industry.

For example, the Government Printing Office has stated that the proposed regulations, including the requirement to collect names in the provisions for legal liability, are very likely to be strong disincentives for depository librarians to participant in making the targeted EPA information available to the public.

H.R. 1790 creates the probability that a State or local officer who is able to receive the worst-case scenario data cannot disclose this information to the very people that officer is charged to protect, without fear of incarceration of up to 1 year. This provision would be a violation of the Emergency Planning and Community Right-to-Know Act that requires dissemination to the public, as well as State laws, including the law of my own State, Colorado. Much of this information is being disclosed and discussed today, yet this legislation would curtail it.

I believe that broad, public availability of these plans is essential to provide communities with the most accurate and timely informa-

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tion regarding toxic chemicals and the offsite consequences of accident scenarios. This is information communities need to make intelligent decisions on how to prepare for chemical accidents. Many of these communities are in rural areas with volunteer fire departments, without the specialized equipment or training to safely respond to hazardous waste fires. And chemical accidents are not rare. The Chemical Safety and Hazard Investigation Board estimates that each year chemical accidents kill over 250 people.

And, Mr. Chairman, private industry which is having to do these plans isn't really worried that some terrorist is going to get this information—or at least shouldn't be. And in my own district, we have an area, Commerce City, which has a great concentration of petroleum companies and other companies with highly hazardous materials. They are getting their plans ready right now. And just in the Sunday, May 16, Denver Rocky Mountain News, John Bennitt, who works for Conoco, said, "Some feel it is silly to give a blueprint of a company's vulnerable points to potential terrorists and sabotagers, but," says Bennitt, "any terrorist group worth its gunpowder probably already has that kind of knowledge." And that is why we have to strike a very careful balance between a community's right to know and any small risk that we might find of terrorists or other improper uses of this information.

Mr. Chairman, I am glad we are having this hearing. I look forward to working in a bipartisan way on sensible legislation. And I am particularly looking forward to the hearing we are going to have next Wednesday. I hope we will be able to have the NCSL, the Attorneys General, and other concerned groups to come before us as well.

And I will yield back the balance of my time.

Thank you.

Mr. BILIRAKIS. I appreciate that.

Mr. Stearns, for an opening statement.

Mr. STEARNS. Thank you, Mr. Chairman.

I think most of us are, as obviously pointed out, interested in hearing from our panelists about the consequences resulting from releasing the complete version of the worst-case scenario reports. I think that has heightened all of our interests.

But, in thinking about this problem, it doesn't seem to me that it is real complicated. I know the White House has offered their plan, but this information in its total comprehensive, electronic presentation represents a threat, obviously, and I think somehow we should just amend the Clean Air Act, just to make it a classified information, and put it, and parts of it, into some type of top-secret code so that it cannot be released.

I would be interested if the panelists think that you could take this information, and once you receive it—if the Congress so legislated it—that it would become immediately top secret and fall under the FBI Confidential Rules, which would mean that you could not, under the Freedom of Information Act, get access to this information. Because I think most of us realize the United States is a potential target for terrorists, and we have had past attacks that have made that clear to us. So no one of us wants to see all this information on the Internet.

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So I think—I hope the panel will consider maybe some simple kind of solution here of just classifying this and moving it into some kind of confidential category, so that the real worry is that someone can get access through the Freedom of Information Act, and promulgate this on the Internet, and provide a security risk.

So, Mr. Chairman, I commend you for your hearing and look forward to hearing the witnesses.

And I yield back the balance of my time.

Mr. BILIRAKIS. I thank the gentleman.

Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman.

Mr. Chairman, I was going to express my concerns about the process in which the hearing was scheduled, and about the witnesses who have been selected, but I know that you indicated now that you will hold another hearing on the topic, so I am not going to go into that in all the detail.

I did want to say, though, that I hope that at this other hearing, we will have a State witness and also, a more representative environmental witness, as well.

Regarding the latter, I received a letter with over four pages of signatures from environmental organizations opposing this bill's attempts to roll back the public's right to know about chemical accident risks in communities nationwide. And If I could submit that letter for the record as well as another letter for the record on the first amendment issue from the Newspaper Association of America.

Mr. BILIRAKIS. Without objection.

[The information referred to follows:]

OPPOSE EFFORTS TO ROLL BACK THE PUBLIC'S RIGHT TO KNOW

May 7, 1999

DEAR MEMBER OF CONGRESS, We urge you to oppose efforts to roll back the public's Right to Know about chemical accident risks in communities across the country. Every fifteen minutes one chemical fire, spill or explosion is reported to the federal government. Each year chemical accidents in the U.S. kill as many Americans as would fit in two fully loaded 737 passenger jets.

In 1990, Congress empowered citizens to learn about potential chemical accidents in order to encourage companies to reduce chemical accident hazards in communities. The Clean Air Act, Section 112(r), requires some 66,000 facilities that use extremely hazardous substances to report what could happen and who could be affected by a chemical accident, from the most-likely accident to a worst-case scenario. Facilities must submit this information by June of this year as part of a larger Risk Management Plan (RMP). By law, this is public information—intended to be disseminated broadly in order to prevent pollution, save lives, and protect property.

Unfortunately, the chemical industry is pressing for legislation to roll back current law by limiting public access to this vital information on accident risks. These attempts to limit the public's Right to Know rely on an unfounded argument that public access to this information creates a national security threat of increased "terrorism." In reality, EPA has specifically prohibited facilities from including classified information in their RMP, and RMPs include no data on tank or process location, site security, or other similar information.

Furthermore, if security is a concern, then it is the chemicals at facilities, *not the information* about their hazards, that pose a threat. Keeping the public in the dark about chemical hazards does nothing to reduce the risks associated with operating chemical facilities in and near America's communities and ignores the real threat of chemical accidents: 600,000 incidents resulting from the everyday use of hazardous and toxic chemicals were reported to the federal government between 1987 and 1996. Communities are made safer by eliminating risky operations and reducing the use of hazardous chemicals, not by limiting the public's understanding of those risks.

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In order to honor the public's Right to Know *and* spur meaningful steps to reduce hazards, complete national RMP data, including worst-case scenarios, must be made readily accessible to all citizens. A model for using public information to empower citizens and encourage voluntary reductions in chemical hazards is provided by the Toxics Release Inventory (TRI), established by Congress in 1986 to document routine releases of toxic chemicals. Since the creation of the TRI, the U.S. has seen a 46 percent reduction in reported toxic releases. The creation of a similar inventory for accidental release risks could provide the same public benefit. At the local level, access to such an inventory empowers citizens to compare accident potential between facilities and areas, and to protect themselves from accidents and to work with local facilities to reduce risks. At the national level, news media and labor and public interest organizations can compare accident potential geographically and across and within industries. This "public spotlight" encourages voluntary reductions in the hazards posed by chemical facilities in communities.

Proposals that would block national access to complete worst-case scenario information cannot fulfill the needs of the public. Specifically, proposals to omit facility names from a national database prevent the information from providing its intended public benefit. Proposals that allow *only* local and state agencies to acquire and disseminate the information create an unreasonable burden for these agencies financially and practically. Local Emergency Planning Committees (LEPCs) are always under-funded, often inactive, and sometimes non-existent.

We, the undersigned organizations, call on Congress to set aside the false choice between protecting potential victims of terrorism and protecting the known victims of chemical accidents. Instead, Congress must join together behind the only course of action that can unify all concerned parties: real and meaningful steps to reduce the hazards that chemical-using facilities bring to our communities. Such actions include setting and meeting targeted reductions in chemical risks, including eliminating hazardous chemicals and processes. Complete national RMP data, made publicly available, would encourage chemical-using facilities to voluntarily reduce the hazards they pose.

Our organizations urge you to oppose legislative efforts that roll back the public's Right to Know about chemical accidents and instead to support meaningful measures to reduce chemical hazards.

Sincerely,

Robert L. Oakley, Washington Affairs Representative, American Association of Law Libraries; Carol C. Henderson, Executive Director, Washington Office, American Library Association; Fran Du Melle, Deputy Managing Director, American Lung Association; Jerry Berman, Executive Director, Center for Democracy and Technology; David Zwick, Executive Director, Clean Water Action; Jackie Savitz, Executive Director, Coast Alliance; Mary Ellen Fise, General Counsel, Consumer Federation of America; Jean Halloran, Director, Consumer Policy Institute/Consumers Union; Fred Krupp, Executive Director, Environmental Defense Fund; Kenneth Cook, President, Environmental Working Group; Brent Blackwelder, President, Friends of the Earth; Frank D. Martino, President, International Chemical Workers Union Council of the UFCW; Alan Reuther, Legislative Director, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW; Jay Feldman, Executive Director, National Coalition Against the Misuse of Pesticides; Philip E. Clapp, President, National Environmental Trust; John Adams, Executive Director, Natural Resources Defense Council; Gary Bass, Executive Director, OMB Watch; Boyd Young, President, Paper, Allied/Industrial, Chemical, and Energy Workers International Union; Robert K. Musil, Ph.D., Executive Director, Physicians for Social Responsibility; Joan Claybrook, President, Public Citizen; Carl Pope, Executive Director, Sierra Club; John Chelen, Executive Director, Unison Institute; Dr. Thom White Wolf Fassett, General Secretary, United Methodist General Board of Church and Society; and William J. Klinefelter, Legislative and Political Director.

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NEWSPAPER ASSOCIATION OF AMERICA
WASHINGTON, DC 20045-1402
May 19, 1999

The Honorable MICHAEL BILIRAKIS
Chairman, Subcommittee on Health and Environment
U.S. House of Representatives
2369 Rayburn House Office Building
Washington, DC 20515

DEAR CHAIRMAN BILIRAKIS: I write to express the Newspaper Association of America's concern with H.R. 1790, the Chemical Safety Information and Site Security Act of 1999, which is the subject of a Subcommittee hearing today. The bill, which was introduced less than a week ago, proposes, among other things, to create an exemption under the Freedom of Information Act. The Newspaper Association of America and the various First Amendment press groups have not had an adequate time to study and ascertain the impact of this legislation on FOIA.

In the past, we have resisted efforts to amend FOIA to address concerns with specific governmental information because the law is designed to be general and apply to all types of information in the possession of federal departments and agencies. The 104th Congress enacted amendments to the Act, commonly referred to as EFOIA, which were designed to foster greater access to information collected, maintained and developed by the government. This bill would appear to reverse this trend.

Neither NAA nor any of its press brethren were given an opportunity to comment on H.R. 1790. We ask that at a minimum we be given that opportunity.

Respectfully submitted,

E. MOLLY LEAHY,
Legislative Counsel.

cc: Representative Sherrod Brown

Mr. PALLONE. Thank you, Mr. Chairman.

Let me also say that groups from my home State, such as the New Jersey Environmental Federation, have also contacted me and said that they would have liked an opportunity to weigh in on this legislation. However, they didn't even have time to thoroughly review the bill, let alone provide testimony. And so I hope that when we have this hearing that, you know, we will be consulted on some of these witnesses, particularly, the environmental witnesses.

Let me just say, if I could, that I believe that the bill—Mr. Bliley's bill—would roll back the public's right to know. There is no question about that in my mind.

It also would allow and require the U.S. EPA to issue guidance without judicial review and public comment, and again, would subject State and local officials to criminal penalties, as has been mentioned, if they violated this guidance. It is difficult for me to see how binding penalties can be imposed for violations of guidance that is nonbinding.

I also understand—and I know it has been mentioned—that the libraries do not want to be in the policing business—another flaw in the bill. And yet I understand that chemical facility security is critical. We do have threats of terrorist attacks that are real and must be addressed. However, public access to accident planning and prevention data also remain vitally important.

And I hope that we can take the time to avoid the pitfalls currently in this bill that I am mentioning and that some of my colleagues on this side of the aisle have mentioned. I would also urge members on both sides of the aisle and other interested parties to take into consideration alternative measures such as those being circulated by Mr. Waxman. For example, the requirements for site security equipment and personnel, and requirements establishing

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protective buffer zones between hazardous chemical operations and residential areas, schools, and other public centers.

Now I know that a lot has been mentioned about this deadline of June 21. But, again, you know the deadline may have been put forth, but the bottom line is that the majority here in the House of Representatives decides when we have these breaks, and we didn't originally have this week-break after Memorial Day that now we are told we are going to have. And then we found out this morning that we are going to have next Friday off. And I am beginning to think how many days that—you know, we have off—maybe all of next week or a good part of next week is off, plus the following week, but we are not the ones that say that. That is the majority. And so, you know, if we have to make time to have these hearings, you know, it is the majority's responsibility to go back and demand that the time be made.

I think we have to have a thorough and properly run hearing, or hearings, with witnesses representing people on all sides of this issue. And I hope that, even though I appreciate what the chairman said about having the hearing, I think that the majority has to improve their efforts to try to make these hearings more broad-based, as we proceed to address this important issue.

Thank you, Mr. Chairman.

Mr. BILIRAKIS. I thank the gentleman.

Mrs. Cubin, for an opening statement.

Mrs. CUBIN. Thank you, Mr. Chairman, for holding this important and timely hearing today on the Internet posting of chemical worst-case scenario release data, as opposed by the administration.

I am glad that we will have two distinguished panels, and I look forward to hearing from them.

In recent months, I have heard from dozens of propane dealers in my State of Wyoming about the potential threat posed by widespread Internet dissemination of worst-case scenario data. Their concerns focus on the possibility of terrorist attacks on their facilities, should chemical release data be accessible on the Internet.

While I am pleased to hear that the EPA has decided not to place this data on its website, I am still concerned that third parties will post this sensitive information on their websites, which means that we still have a major threat to national security.

I do realize, of course, that individuals have safety concerns about chemical sites in their local communities, and they have a right to access the worst-case scenario data. Coming from a State like Wyoming, where we have more volunteer fire departments and more volunteer emergency service workers than we do professional, I absolutely recognize the need for these communities to have access to that information, and I want to promote that. But I do question whether or not placing this sensitive information in Federal depository libraries is the best way to grant access, despite the restrictions that are listed in the bill.

One aspect that I am concerned about is the fact that the administration wants to put the information in the Federal Depository Libraries, but then restrict it, but the libraries don't currently place such restrictions on any information. And they are not equipped to enforce these restrictions. And so I wonder what kind of a system are we setting up? And is that what we really need to do? At this

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point, I fail to see how we could adequately safeguard this information if it were available in the libraries.

Then, I would like to make a brief comment on the fact that H.R. 1790 is not the only aspect of the risk management program that has caused concerns among constituents and industry members in my district. Constituents continue to write in—large numbers—on this issue, and while they are concerned about the posting of worst-case data on the Internet, they are still primarily concerned about the inclusion of propane under the RMP. Industries that produce fuel oil, natural gas, and gasoline, for example, are not subject to the RMP, and they are just as volatile. And I am a chemist, and some of them are more volatile than propane—but as I said, they are not included in the RMP. And so by the propane industry having to submit an RMP to EPA, propane dealers in Wyoming will most assuredly be forced to switch to an alternative fuel.

So this is a timely hearing, and I look forward to learning a lot about it, and I thank everyone for being here.

And I thank you, Mr. Chairman.

Mr. BILIRAKIS. I thank the gentlelady.

Let's see—Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

I just want to thank you for calling this hearing. I have the same concerns that some of my colleagues have already voiced about the process, so I am doubly pleased that we will have a second hearing next week. I do think it is important to hear from State officials, since these provisions certainly would have impact on them. And rather than being guilty of just simply mandating something and handing it down to the States, I think we should work as partners to address their concerns.

Thank you, and I yield back the balance of my time.

Mr. BILIRAKIS. I thank the gentleman.

Mr. Pickering, for an opening statement.

Mr. PICKERING. Mr. Chairman, I just want to commend you for having this hearing, and I look forward to hearing the panel.

This is a critically important issue, as we look at public health and public safety and disclosure, and the appropriate balance of how we maximize the intent here, and that is for the safety of the public.

So, again, I commend you for this hearing, and look forward to hearing the panels' testimony.

Mr. BILIRAKIS. Thank you, sir.

Mr. Green.

Mr. GREEN. Mr. Chairman, I have a full statement I would like to put in your record.

Mr. BILIRAKIS. Without objection.

Mr. GREEN. I would like to thank you for allowing for the additional hearing next week.

As one who believes in the consumer right-to-know legislation that we have on the books, I am concerned that the bill we have presently drafted is not that middle ground that we are looking for. So, hopefully, after next week's hearing, we will see more of that middle ground.

Thank you, Mr. Chairman.

Mr. BILIRAKIS. I thank the gentleman.

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Let's see—I think that completes the opening statements from the members of the subcommittee.

As we have already said, opening statements of all members can be made a part of the record, without objection.

The Chair calls for the first panel—the honorable Ivan K. Fong, Deputy Associate Attorney General, with the U.S. Department of Justice here in Washington, DC; Mr. Timothy Fields, Jr., Acting Assistant Administrator, Office of Solid Waste and Emergency Response, Environmental Protection Agency; and Mr. Robert Burnham, Chief, Domestic Terrorist Section, Federal Bureau of Investigation.

Gentlemen, your written statements are a part of the record. I would appreciate your trying to sort of complement those, or supplement those, if you would, orally. Take anywhere from 5 to 10 minutes. I don't really want to cut you off, because what you have to tell us is very significant.

Let's kick it off with Mr. Fong.

Mr. Fong, please proceed, sir.

STATEMENTS OF IVAN K. FONG, DEPUTY ASSOCIATE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE; TIMOTHY FIELDS, JR., ACTING ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY; AND ROBERT M. BURNHAM, CHIEF, DOMESTIC TERRORISM SECTION, FEDERAL BUREAU OF INVESTIGATION

Mr. FONG. Thank you, Mr. Chairman. Good afternoon.

Because my statement is short, I would like to go ahead and read it into the record.

Mr. BILIRAKIS. Feel free to do so, sir.

Mr. FONG. My name is Ivan Fong; I am a Deputy Associate Attorney General at the Department of Justice. The Office of the Associate Attorney General is responsible, among other things, for the management and oversight of the Department's Office of Information and Privacy, as well as its civil litigating components, which include the Antitrust, Civil, Civil Rights, Environment and Natural Resources, and Tax Divisions. In our office, I have particular responsibility for civil litigation, environmental, and technology policy issues. I am pleased to have this opportunity this afternoon to discuss H.R. 1790, the Chemical Safety Information and Site Security Act of 1999.

Let me say at the outset that this proposal reflects, at bottom, a very careful weighing and balancing of two critically important public interests.

First, as you are well aware, statutes such as the Clean Air Act and the Freedom of Information Act require certain information to be made available to the public. For chemical facility risk management information submitted pursuant to EPA's Clean Air Act regulations, including the offsite consequence analysis data, that are the subject of this proposal, these disclosure requirements promote public safety, not only by empowering citizens so that they can work with industry and others to minimize the risk of accidental release of toxic or flammable chemicals, but also by ensuring that

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Federal, State, and local officials can work with their communities to prepare for and, if necessary, respond to such accidents.

By the same token, however, the widespread dissemination of this type of information, particularly if a nationwide data base of such information were made available in electronic form, could increase the risk of intentional release as a result of a terrorist attack. Indeed, the Federal Bureau of Investigation, the National Security Council, and other law enforcement components of the Federal Government have determined that broad electronic dissemination of OCA data would raise the risk of terrorists using such information to target particular chemical facilities for attack. The OCA data would provide them with information on locations around the country where the greatest damage to human health and the environment would occur if a facility were sabotaged.

Balancing our commitment to reduce the risk of accidental release through public disclosure, on the one hand, and the need to minimize the risk of terrorist attack arising from broad electronic dissemination of such information, on the other, is neither easy nor obvious. We believe, however, that our proposed legislation strikes such an appropriate balance. It is a reasonable and prudent proposal, and we accordingly urge its prompt enactment.

To summarize briefly, because of the law enforcement and security concerns that have been raised, our proposal exempts OCA data from FOIA requirements and prohibits Federal officials and employees from providing this information to the public in electronic form. The proposal, however, permits EPA to make OCA data available in paper form, and the Administrator is to determine the conditions for such dissemination in guidance.

Our proposal also requires EPA to make risk management plans available for public inspection, but not copying, in paper or electronic form, at locations such as Federal depository libraries around the country.

To impede use of such information by potential terrorists, the OCA data may not be provided in an electronic format that would allow ranking of facilities for damage potential.

In addition, our proposal allows OCA data to be provided electronically to State and local officials for official use. If such officials request this information in paper form, it will be provided for facilities located in their State. To further protect the information, the legislation allows additional dissemination of the OCA data by State and local officials only to the extent Federal officials and employees are permitted to do so.

Finally, we share the view of many in Congress that site security measures are as important as information security measures in reducing terrorist attacks. The legislation, therefore, authorizes the Attorney General to review industry security practices and the effectiveness of the act to determine the need, if any, for improved security practices for the types of facilities covered by the RMP requirements.

We acknowledge the importance and complexity of this issue on a variety of different levels, and we are prepared to work closely with members of this subcommittee and other interested parties to enact balanced and effective legislation in a timely fashion.

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We believe our proposal strikes an appropriate balance, and we look forward to working with you to ensure its enactment.

Thank you.

[The prepared statement of Ivan K. Fong follows:]

PREPARED STATEMENT OF IVAN FONG, DEPUTY ASSOCIATE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE.

Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is Ivan Fong. I am a Deputy Associate Attorney General at the Department of Justice. The Office of the Associate Attorney General is responsible, among other things, for management and oversight of the Department's Office of Information and Privacy, as well as its civil litigating components, which include the Antitrust, Civil, Civil Rights, Environment and Natural Resources, and Tax Divisions. In our office, I have particular responsibility for civil litigation, environmental, and technology policy issues. I am pleased to have this opportunity to discuss H.R. 1790, the "Chemical Safety Information and Site Security Act of 1999."

Let me say at the outset that this proposal reflects, at bottom, a careful weighing and balancing of two very important public interests. First, as you are well aware, statutes such as the Clean Air Act, 42 U.S.C. §§7401-7642, and the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, require certain information to be made available to the public. For chemical facility risk management information submitted pursuant to EPA's Clean Air Act regulations (such as off-site consequence analysis ("OCA") data), these disclosure requirements promote public safety, not only by empowering citizens so that they can work with industry and others to minimize the risk of accidental release of toxic or flammable chemicals, but also by ensuring that federal, state, and local officials can work with their communities to prepare for and, if necessary, respond to such accidents.

By the same token, however, the widespread dissemination of this type of information—particularly if a nationwide database of such information were made available in electronic form—could increase the risk of intentional release as a result of terrorist attack. Indeed, the Federal Bureau of Investigation, the National Security Council, and other security and law enforcement components of the federal government have determined that broad electronic dissemination of OCA data would raise the risk of terrorists using such information to target particular chemical facilities for attack. The OCA data would provide them with information on locations around the country where the greatest damage to human health and the environment would occur if a facility were sabotaged.

Balancing our commitment to reduce the risk of accidental release through public disclosure, on the one hand, and the need to minimize the risk of terrorist attack arising from broad electronic dissemination of such information, on the other, is not easy or obvious. We believe, however, that our proposed legislation strikes such an appropriate balance. It is a reasonable and prudent proposal, and we accordingly urge its prompt enactment.

Because of the law enforcement and security concerns that have been raised, our proposal exempts OCA data from FOIA requirements and prohibits federal officials and employees from providing this information to the public in electronic form. The proposal, however, permits EPA to make OCA data available in paper form, and the Administrator is to determine the conditions for such dissemination in guidance. Our proposal also requires EPA to make risk management plans ("RMP's") available for public inspection, but not copying, in paper or electronic form, at locations such as federal depository libraries located around the country. To impede use of such information by terrorists, the OCA data may not bo provided in an electronic format that would allow ranking of facilities for damage potential.

In addition, our proposal allows OCA data to be provided electronically to state and local officials for official use only. If such officials request this information in paper form, it will be provided only for facilities located in their State. To further protect the information, the legislation allows additional dissemination of the OCA data by state and local officials only to the extent federal officials and employees are permitted to do so.

Finally, we share the view of many in Congress that site security measures are as important as information security measures in reducing terrorist risks. The legislation therefore authorizes the Attorney General to review industry security practices and the effectiveness of the Act to determine the need, if any, for improved security practices for the types of facilities covered by the RMP requirements.

We acknowledge the importance and complexity of this issue on a variety of different levels, and we are prepared to work closely with Members of the Subcommit-

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tee and other interested parties to enact balanced and effective legislation on this issue in a timely fashion. We believe our proposal strikes an appropriate balance, and we look forward to working with you to ensure its enactment.

Mr. BILIRAKIS. Thank you, Mr. Fong.

Mr. Fields, I am not sure how much time your testimony will take.

We have been just been noticed there is a 15-minute vote on the floor, and it can be followed by 4 or 5 5-minute votes, which means it will be awhile, probably about 40 minutes at least, before the members could be back. So let's see if we can get through at least Mr. Fields' testimony.

STATEMENT OF TIMOTHY FIELDS, JR.

Mr. FIELDS. Thank you, Mr. Chairman.

I will briefly summarize my testimony. Today, at EPA, I am responsible for the Agency's Counterterrorism Program, as well as the implementation of section 112(r) of the Clean Air Act.

I am pleased to be here to discuss H.R. 1790, the Chemical Safety Information and Site Security Act of 1999.

We agree with the Department of Justice and the FBI that this bill would preserve important public health and safety benefits that public access to risk information has been shown to achieve, while protecting against a potential threat from terrorists.

The proposed legislation addresses the issue that arose as a part of EPA's implementation of section 112(r). This section specifically provides that risk management plans are to include a hazard assessment, including information on the potential consequences of worst-case releases, an accident prevention program, and an emergency response program.

In view of the large number of covered facilities and the amount of information that must be reported in risk management plans, a FACA subcommittee consisting of representatives of industry, State and local government, academia, and environmental groups unanimously recommended that EPA develop an electronic system for submission and management of risk management plans. EPA developed the recommended system for managing and handling this data.

Potential Internet dissemination of the worst-case scenarios information, however, in risk management plans, has raised concerns about a potential threat from terrorists.

The administration's proposed legislation addresses those concerns, while preserving public access to worst-case scenario information.

Preserving public access to offsite consequence analysis information is vitally important because we expect to produce public safety benefits through this mechanism. EPA's experience with the Toxic Release Inventory Program, under the EPCRA, suggests that public access to information on toxic emissions creates an incentive for facilities to reduce those emissions. EPA expects public access to OCA data similarly will stimulate and achieve risk reduction through safer practice and technologies.

Public access to RMP information, including OCA data, is expected to provide added impetus to accident prevention.

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The law recognizes that communities located near these facilities have a fundamental right to be told of the hazards and to find out what steps facilities are taking to prevent accidental releases. OCA data will give citizens information about the risks of chemical accidents. OCA data from local facilities will inform citizens about the risks they face in their community, while OCA data from similar facilities in other locations will provide insight into what risk reductions could be achieved locally by those mechanisms.

EPA believes that States and local emergency planning committees have a critical role to play in chemical accident risk reduction. Providing States and local governments with electronic access in management of the RMP information is key to the ability to manage this program.

The goal of the legislative proposal that is before us today is to provide benefits of public access of OCA data, while minimizing the potential risks of Internet access to that data.

Our approach to this dilemma is to restrict the manner in which Government officials may distribute OCA data, so as to make it extremely difficult for anyone to create a national electronic data base that includes OCA. The legislation also considers the need for additional site security to make sure that facilities are taking adequate steps to reduce their vulnerability.

The proposed legislation calls on EPA to develop guidance to implement the bill's restrictions and requirements. EPA will work with the interagency task force that developed this legislation and will consult with other stakeholders, including State officials, local emergency planning committees, public advocacy groups, and industry, to develop appropriate guidance.

We recognize that this legislation may need some modification, as addressed by concerns of members. We are willing to work with this subcommittee, as necessary, to make appropriate revisions to this bill quickly to address member concerns.

EPA will work with its partners in chemical safety to find appropriate ways to ensure that the information is used by individuals to reduce the risk of chemical accidents in their neighborhoods. On the other hand, we are on balance—EPA is confident that the benefits of public access significantly outweigh whatever risk may remain.

We support this legislation before this committee, pledge to work with you to address any continuing concerns, and hope that a bill can be sent to the President soon for signature that we all can accept.

Thank you, Mr. Chairman.

[The prepared statement of Timothy Fields, Jr. follows:]

PREPARED STATEMENT OF TIMOTHY FIELDS, JR., ACTING ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, and Members of the Subcommittee, I am Tim Fields, Acting Assistant Administrator in the Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency (EPA). My office has primary responsibility for the Risk Management Program under Section 112(r) of the Clean Air Act (CAA) and Federal implementation of several sections of the Emergency Planning and Community Right-to-Know Act (EPCRA). I also am responsible for the Agency's counter-terrorism program and the associated coordination with other Federal partners, State and local governments, and the private sector.

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I am pleased to have this opportunity to discuss the Administration's proposed bill, "The Chemical Safety Information and Site Security Act of 1999." We agree with the Department of Justice (DOJ) that, if enacted, the bill would preserve the important public health and safety benefits that public access to risk information has been shown to achieve, while protecting against a potential threat from terrorists.

The Risk Management Program

Public awareness of the potential danger from accidental releases of hazardous chemicals has increased over the years as serious chemical accidents have occurred around the world. Public concern intensified following the 1984 release of methyl isocyanate in Bhopal, India, that, to date, has killed many more than the 2,000 people originally reported, with many thousands more injured by the chemical release.

The proposed legislation addresses an issue that arose as part of EPA's efforts to implement CAA section 112(r). Following the tragic chemical accident in Bhopal, India, Congress added section 112(r) to the CAA in 1990 to reduce the risk of accidental releases of extremely hazardous substances. Section 112(r) establishes a general duty on industry to handle extremely hazardous substances safely, and calls on EPA to establish a regulatory program that requires facilities with large quantities of such substances to prepare and implement risk management plans (RMPs).

Section 112(r) specifically provides that RMPs are to include a hazard assessment, including information on the potential consequences of worst-case releases, an accident prevention program and an emergency response program. It further requires that RMPs be submitted to States and local emergency planning and response officials and made available to the public. Section 112(r) demonstrates the importance Congress placed on informing State and local officials and the public about chemical risks in their communities.

EPA issued regulations implementing section 112(r) in 1994 and 1996. The 1994 rule provided industry with a list of covered substances and their threshold quantities. The 1996 rule requires any facility with more than a threshold quantity of a listed hazardous substance to submit an RMP by June 21, 1999. A recently issued court order stayed the rule with respect to propane, but EPA estimates that 36,000 facilities still must submit RMPs by the June deadline. To the extent the stay is eventually lifted, an additional 33,000 facilities will be required to submit RMPs.

In view of the large number of covered facilities and the amount of the information that must be reported in RMPs, a Federal Advisory Committee Act (FACA) subcommittee consisting of representatives of industry, State and local governments, academia and environmental groups unanimously recommended that EPA develop an electronic system for submission and management of RMPs. Most members of the subcommittee also recommended that EPA electronically disseminate RMPs to the public over the Internet. EPA developed the recommended system for electronically handling RMPs.

Potential Internet dissemination of the worst-case scenario information in RMPs, however, raised concerns about a potential threat from terrorists. The Administration's proposed legislation addresses those concerns while preserving public access to worst-case scenario information.

What Is Off-Site Consequence Analysis Data?

OCA data is based on analyses of the potential off-site consequences of hypothetical worst-case and alternative case accidental releases. The data include how far dangerous concentrations of a released chemical can travel ("distance to endpoint"), how many people live in the circle defined by the distance to endpoint, and what types of "public and environmental receptors" (e.g., schools, hospitals, state or national parks) are within that circle. It does NOT include information on where the chemicals are stored, what would cause a release or what site security measures a facility has in place.

The parameters for worst-case release analyses are mostly established by regulation, so results of such analyses provide a rough basis for comparing the intrinsic risk posed by facilities as a result of the amount of chemicals stored and the passive (i.e., no energy or human action required) accident mitigation measures in place. Alternative case analyses account for active as well as passive accident mitigation measures a facility has in place, and therefore provide a way to compare the efficacy of prevention programs.

Benefits of Public Access to Information

Preserving public access to Off-Site Consequence Analysis (OCA) information is vitally important because we expect it to produce public safety benefits. EPA's experience with the Toxic Release Inventory (TRI) under the Emergency Planning and Community Right-To-Know Act (EPCRA) suggests that public access to information

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on toxic emissions creates an incentive for facilities to reduce those emissions. EPA expects public access to OCA data similarly will stimulate and achieve risk reduction through safer practice and technologies.

In fact, EPA has built public access to RMPs into its implementation of section 112(r). Instead of creating a command-and-control program, the RMP rule calls on every facility to develop and implement an accident prevention program that addresses the particular chemical risks present at the facility. Public access to RMP information, including OCA data, is expected to provide added impetus for accident prevention.

The law recognizes that communities located near these facilities have a fundamental right to be told of the hazards and to find out what steps facilities are taking to prevent an accidental release. Through this information, communities located near these facilities can make risk-based decisions regarding the responsibility of these facilities to operate safely. It has been said that the facility has a social contact with the community that can be lost if the facility does not operate safely and does not communicate effectively with the community.

Once informed, citizens can engage in constructive dialogue with facilities to address any concerns. OCA data will give citizens information about the risks of chemical accidents. OCA data from local facilities will inform citizens about the risks they face in their community, while OCA data from similar facilities in other locations will provide insight into what risk reductions could be achieved locally. Information drives action.

Managing the Data

To be useful, OCA data must be managed electronically. More than 69,000 facilities potentially are subject to the RMP program. Every covered facility must submit at least one worst-case scenario, and the vast majority of facilities also must submit at least one alternative release scenario at the facility. Collectively, for the nation and for most States, facilities' RMP data, including OCA data, cannot be reasonably managed in paper form.

Many State and local governments have told EPA that they lack the resources to manage the volume of information expected to be submitted by facilities under the RMP program. Already, some State and many local governments have not been able to make full use of facility hazard information submitted to them under EPCRA. Representatives of State and local governments have indicated that if they do not get help managing RMP information, they are unlikely to use it. States also have emphasized the need to share this information with all stakeholders and the public to foster risk reduction.

EPA believes that States and Local Emergency Planning Committees (LEPCs) have a critical role to play in chemical risk reduction. Providing states and local governments with electronic access and management of the RMP data is key to their ability to play that role.

As I noted earlier, a FACA subcommittee unanimously recommended that EPA collect and manage RMP information electronically. EPA accordingly developed an electronic system that promises to ease the paperwork burden for industry and State and local governments. The subcommittee also emphasized the need for RMP information to be accessible to the public, so citizens could be partners in risk reduction efforts.

Internet Availability Could Pose A Security Risk

While EPA is required to make RMPs, including OCA data, available to the public, there have been security concerns over making national OCA data available over the Internet. The Federal Bureau of Investigation (FBI) and others advised us that Internet access to a searchable national database of OCA information could pose a security risk.

In response to FBI's advice, on November 6, 1998, the Agency announced it would not post OCA information on the Internet and agreed to work with FBI to minimize the risk of others posting that data.

Freedom of Information Act Concerns

Following EPA's decision, however, concerns were raised that the Freedom of Information Act (FOIA) might force the Agency to make OCA data available electronically and even might require EPA to post that data on the Internet. EPA worked with an interagency task force consisting of representatives of DOJ, the Office of Management and Budget (OMB), the National Security Council and other Federal agencies to determine what effect FOIA could have on dissemination of OCA information and to respond accordingly.

DOJ concluded that requests for OCA information under FOIA could force EPA to make OCA data available electronically. The interagency group considered wheth-

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er there were any legal bases for exempting the data from FOIA and concluded there probably were none, except to the extent such information was confidential business information (CBI). In general, however, OCA data are not expected to qualify as CBI. The group then developed the legislative proposal that has been forwarded to you.

Proposed Legislation

The goal of the Administration's proposed legislation is to protect the benefits of public access to OCA data while minimizing the potential risks of Internet access to that data. As I stated earlier, experience suggests that public availability of chemical risk information results in risk reduction. We believe strongly that the risk reduction benefits of public access to OCA data must be preserved.

We also recognize that so long as there is any public access to OCA data, there can be no absolute guarantee that OCA data will not eventually get on the Internet. Our approach to this dilemma is to restrict the manner in which government officials may distribute OCA information, so as to make it extremely difficult for anyone to create a national electronic database that includes OCA. The legislation also considers the need for additional site security to make sure that facilities are taking adequate steps to reduce their vulnerability.

Specifically, the Administration proposal would:

- Prohibit Federal, State, and local government officials from disseminating OCA data with facility identifiers in electronic form to the public;
- Provide the public with access to OCA data in paper form, but direct EPA, in consultation with other Federal agencies, to determine appropriate limits on paper access so that the potential for compiling a national database, even in paper form, is minimized;
- Ensure public access to full OCA data by making the data available for review, but not copying, in reading rooms across the country;
- Allow EPA, in consultation with other Federal agencies, to make available to the public an electronic version of the data without facility identification or location information; and
- Authorize the Attorney General to study current industry security practices, and the need for and effectiveness of the provisions of the legislation, and make appropriate recommendations.

The proposed legislation calls on EPA to develop guidance to implement the bill's restrictions and requirements. EPA will work with the interagency task force that developed this legislation, and will consult with all stakeholders, including public advocacy groups and industry, to develop the guidance.

The Safety Potential of RMPs

With all the attention being paid to the OCA issue, we must not lose sight of the real improvements in chemical safety the RMP program as a whole will achieve. Since the RMP rule was issued nearly three years ago, industry already has invested much time and effort to achieve risk reduction at their facilities. At a recent meeting convened by the Wharton School at the University of Pennsylvania, several industry representatives indicated that the development of RMPs had indeed resulted in accident risk reduction and safer operations. Many facility representatives also have told us that while they were at first skeptical of the benefits of the accident prevention program, completing a RMP has led to many unexpected safety improvements at their facilities.

EPA also wants to emphasize that while not every company must complete an RMP, under the "General Duty" provisions of the Clean Air Act (section 112(r)(1)), every company has an obligation to understand the hazards, operate safely, prevent accidents, and minimize the consequences of accidental releases of any quantity of any extremely hazardous substance, whether EPA has listed the substance or not. Similar to the chemical industry's own Responsible Care code of safe operating practices, the General Duty clause (GDC) specifies no list of chemicals or threshold quantities for applicability.

Conclusion

We believe the proposed legislation strikes a balance between preserving public access to OCA information and addresses the potential threat that may be posed by Internet access to that information.

The restrictions and requirements that the legislation would establish ensure adequate public access to the information while reducing the risk of anyone posting a searchable database on the Internet. EPA will work with its partners in chemical safety to find appropriate ways to ensure the information is used by individuals to reduce the risk of chemical accidents in their neighborhoods. In light of this balance,

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EPA is confident that the benefits of public access significantly outweigh whatever risk may remain. We support this legislation, pledge to work with the Congress to address any continuing concerns, and hope a bill can be sent to the President for signature soon.

Mr. BILIRAKIS. Thank you, Mr. Fields.

And I apologize, first, to all three of you and to the next panel, but, unfortunately, we are going to have to get over for those votes.

So we will break—your testimony will take properly more than 5 minutes, will it not, Mr. Burnham?

Mr. BURNHAM. I can probably limit it to 5 minutes. I am just——

Mr. BILIRAKIS. Well, your testimony is important, though. I don't think we ought to worry about limiting it at this point.

We are just going to break until about 4 o'clock, and that is 40 minutes. And it is probably not too likely we will finish up by then, but we will do our best.

Thank you very much. Again, I apologize; it can't be helped.

[Brief recess.]

Mr. BILIRAKIS. Well, hopefully, a minority member will be here before long, and a few more from this side.

Mr. Burnham, why don't we just go ahead and start off with you, sir? Go ahead.

STATEMENT OF ROBERT M. BURNHAM

Mr. BURNHAM. Good afternoon now, Mr. Chairman.

My name is Robert Burnham; I am the Domestic Terrorism Section Chief of the FBI. I have testified up here on one occasion before and one time in the Senate. I am pleased to have this opportunity to address the committee today with respect to whether H.R. 1790, the Chemical Safety Information Site Security Act of 1999, satisfies concerns that the FBI has previously expressed regarding electronic dissemination over the Internet of worst-case scenario data.

The FBI supports the Clean Air Act and the spirit of the community right-to-know legislation. We understand the benefits of providing the necessary information to the community, which allows them to make informed decisions on local planning and preparedness issues, and we acknowledge that right-to-know laws create incentives for facilities to reduce risks relating to chemical manufacturing and storage processes.

At the same time, we are concerned about the need to limit the risk associated with the distribution of information that can be used against those same communities in a criminal manner. The FBI has worked with the EPA to identify those sections of the risk management plans that we believe could be directly utilized as a targeting mechanism in a terrorist or criminal incident.

I have earlier testified before this committee and provided a threat analysis regarding the effect of unfettered release of worst-case scenario data over the Internet. I have also provided written answers to questions submitted by the committee, and I have also testified before the Senate Subcommittee on Clean Air and Wetland, Private Property, and Nuclear Safety on the same issues.

In our discussions with EPA over the last 18 months, the FBI has repeatedly asserted, from a threat analysis viewpoint, that the FBI opposed the unrestricted release of worst-case scenario infor-

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mation in electronic format to anyone other than Federal, State, and local government agencies who are responsible for emergency management and planning. These agencies are the primary end-users for this type of information, and the availability of this information to these agencies is expected to produce positive results in the future.

In our discussions with the EPA, other Federal agencies, and affected parties, we have tried to balance our security concerns and give communities and State and local agencies the appropriate access to this information. The FBI has consistently maintained that the potential release of this worst-case scenario data in an uncontrolled manner would provide targeting tools and new ideas for criminals and terrorists. Under the Freedom of Information Act, this information would have to be released in the form maintained by EPA, including electronic format.

The bill being considered prevents disclosure of the worst-case scenario information under the FOIA, but also allows disclosure under certain circumstances.

The Department's Office of Legal Counsel has reviewed the disclosure limitations contained in this legislation and has concluded that they are consistent with the first amendment. The FBI believes the proposed legislation addresses the concerns that we have consistently raised.

And in that regard, I would like to mention I have heard much about the fact that the FBI is leading the worst-case scenario data with the threat of——

Mr. BILIRAKIS. Pull the microphone a little closer, will you please, Mr. Burnham, because we can hear you all right here, but I am afraid maybe——

Mr. BURNHAM. Okay.

Our actual involvement of this goes back—starts in December 1997 when we first became aware at that time that this type of information was going out over the Internet. At that time, it was all going out over the Internet, with unrestricted access.

At the time, the FBI worked with the interagency law enforcement community; we worked with the CIA, with representatives from the Treasury Department, the Secret Service, ATF, in a working group, and arrived at a consensus that this information going out uncontrolled over the Internet did present potential problems from a threat analysis standpoint.

Thereafter, we worked with EPA extensively, and EPA, after working with them, agreed that the information should not go out over the Internet in an uncontrolled manner.

It was then in October of last year, in further discussions with EPA, that we also expressed concerns that not only the fact that we did not—that from a threat analysis standpoint, that it should not go out over the Internet, but we also first raised at that time, concerns that it may go out under third-party disseminations, specifically, with the FOIA. In fact, we reported that to this committee at that time in a report in October 1998 that that was one of our concerns, that potentially the information could go out under the Freedom of Information Act.

That being said, we think this present bill we strongly support for prompt consideration by Congress and speedy enactment.

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And I am available for any questions that the committee may have.

Thank you.

[The prepared statement of Robert M. Burnham follows:]

PREPARED STATEMENT OF ROBERT M. BURNHAM, CHIEF, DOMESTIC TERRORISM SECTION, FEDERAL BUREAU OF INVESTIGATION

Good afternoon Mr. Chairmen and Members of the Subcommittee, my name is Robert M. Burnham, and I am the current Chief of the Domestic Terrorism Section at FBI Headquarters. My current responsibilities include national oversight and management of the Domestic Terrorism Operations, Weapons of Mass Destruction and Special Events Management Programs for the FBI. I am pleased to have this opportunity to address the committee today with respect to whether HR-1790, the Chemical Safety Information and Site Security Act of 1999, satisfies concerns the FBI has previously expressed regarding electronic dissemination over the Internet of Worst Case Scenario data.

The Clean Air Act (CAA) mandates that chemical facilities provide to EPA a Risk Management Plan (RMP), detailing their risk prevention mitigation plans. It includes the worst case scenario data and alternative release data for both toxic and flammable materials. The data require calculations regarding distances to end points, as well as the populations that would be affected, which would provide information about the size of a plume from release and the potential casualties from the plume.

The FBI supports the CAA and the spirit of community right-to-know legislation. We understand the benefits of providing the necessary information to the community, which allows them to make informed decisions on local planning and preparedness issues, and we acknowledge that right-to-know laws create incentives for facilities to reduce risks relating to chemical manufacturing and storage processes. At the same time, we are concerned about the need to limit the risk associated with the distribution of information that can be used against those same communities in a criminal manner. The FBI has worked with the EPA to identify those sections of the Risk Management Plans (RMP) that we bolieve could be directly utilized as a targeting mechanism in a terrorist or criminal incident.

I have earlier testified before this committee and provided a threat analysis regarding the affect of unfettered release of the Worst Case Scenario data over the Internet. I have also provided written answers to questions submitted by the committee and have also testified before the Senate Subcommittee on Clean Air and Wetland, Private property and Nuclear Safety on the same issue. In our discussions with EPA over the last eighteen months the FBI has repeatedly asserted, from a threat analysis view point, that the FBI opposed the unrestricted release of Worst Case Scenario information in electronic format to anyone other than federal, state, and local government agencies who are responsible for emergency management and planning. These agencies are the primary end users for this type of information, and the availability of this information to these agencies is expected to produce positive results in the future. In our discussions with the EPA, other federal agencies and affected parties, we have tried to balance our security concerns and give communities and state and local agencies the appropriate access to this information. The FBI has consistently maintained that the potential release of this Worst Case Scenario data in an uncontrolled manner would provide targeting tools and new ideas for criminals and terrorists. Under the Freedom of Information Act (FOIA), this information would have to be released in the form maintained by EPA, including electronic format.

The bill being considered prevents disclosure of the "Worst Case" Scenario information under the FOIA, but allows disclosure under certain circumstances. The Department's Office of Legal Counsel (OLC) has reviewed the disclosure limitations contained in this legislation and has concluded that they are consistent with the First Amendment. The FBI believes the proposed legislation addresses the concerns that we have consistently raised. We therefore strongly support its prompt consideration by the Congress and its speedy enactment.

Thank you for this opportunity to appear before you today. I would be happy to answer any questions you may have.

Mr. BILIRAKIS. Thank you. Thank you very much, sir.

Mr. Fields, your statement indicates that EPA supports this legislation and hopes that a bill can be sent to the President "soon."

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You used that word very specifically. Can you elaborate for the committee what you mean when you say "soon?"

Mr. FIELDS. We would like to address the issues that have been raised by members of this subcommittee in the previous statements and work toward getting a piece of legislation that could be worked on together with the Senate sent to the President and signed—prior to June 21 of this year.

So we want to quickly work with you to resolve issues with the bill that I have heard some of the members indicate in their opening statements, issues of criminal versus civil sanctions, issues of voluntary firefighters and local emergency planning committees and getting access to information, and guidance versus rule. I think those issues can be addressed very easily and quickly.

And we believe that, with your support, Mr. Chairman, we can get a piece of legislation that we can all support and move forward to get it signed by the President in the next month.

Mr. BILIRAKIS. All right. Well, if, for instance, as a result of a lack of time and things of that nature, even stonewalling which I trust is not taking place, not even intended to take place, if no legislative action is taken by that June 21 date, what are you concerned with?

Mr. FIELDS. Well, we made several things very clear. We will not post the OCA information on the Internet. RMP information, including OCA data must be submitted by June 21, 1999. We believe that information must still be submitted, including OCA. Second, if we get a FOIA, Freedom of Information Act request, we have 30 days after that to act on that request.

Mr. BILIRAKIS. Isn't it true that you already——

Mr. FIELDS. The FOIA request does not actually have to happen by June 21.

Mr. BILIRAKIS. Haven't you already received some Freedom of Information requests for this data, at EPA——

Mr. FIELDS. We have no pending Freedom of Information Act requests at the current time. We received more than 1,000 risk management plans, voluntarily, to date. These facilities have submitted risk management plans prior to June 21, but we don't have——

Mr. BILIRAKIS. No requests?

Mr. FIELDS. No pending FOIA requests; that is correct.

Mr. BILIRAKIS. Mr. Burnham——

Mr. FIELDS. Mr. Chairman, I should clarify——

Mr. BILIRAKIS. Oh, I am sorry; go ahead, Mr. Fields.

Mr. FIELDS. While we don't have any pending FOIA requests, one was submitted and was subsequently withdrawn. So there is no pending request.

Mr. BILIRAKIS. One was submitted, but——

Mr. FIELDS. One was submitted, and it was withdrawn.

Mr. BILIRAKIS. Yes.

Well now, Mr. Burnham, what kind of—within the bounds, of course, of public testimony, obviously, can you tell us what types of threats that the FBI has been concerned about over the last year and a half which caused you to consistently argue for restrictions on the electronic dissemination of this data, this type of data?

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Mr. BURNHAM. Well, again, the consensus among the law enforcement community and the FBI was—I think I have characterized it as if this type of information went out——

Mr. BILIRAKIS. Pull the microphone closer, please, sir. I just want to make sure that everybody can hear you.

Mr. BURNHAM. Again, this is the consensus of not only FBI—while I have testified for the law enforcement community—but also among the law enforcement community, the fact that this type of information, if disseminated, could be—I think I have characterized it as a "blueprint" for potential terrorist attack.

Again, what you are doing, you are putting out on the Internet, in an unfettered, uncontrolled fashion, the distance to end population, if a target was attacked, how many people could be killed. It could be downloaded anywhere in the world. That was a concern, not only among us, but to the law enforcement interagency working group that was looking at this.

Mr. BILIRAKIS. Well, sir, you can't be unaware, of the criticisms and arguments that have been leveled at attempts to exert some control over the OCA data.

Later today, Mr. Orum will paint a scenario under which a citizen is frustrated at every turn in trying to obtain information about dangerous conditions in her community.

So taking that as an example, or an illustration, how would you respond to arguments that this legislation unduly restricts public access? I mean I think you have all indicated that you are concerned about balancing concerns. How would you respond to that?

Mr. BURNHAM. I would say this; I—again, my testimony is consistent with and has—been limited to a threat analysis standpoint, if the information does go out. In fact, I can even tell you, I think I prefaced it by the fact that I am here, to say this does satisfy from a threat analysis standpoint that the information would not go out.

I think in reading this, when I read it, I think there was provisions in there, as I stated in my opening statement, also, that we are concerned with, but that this information should go out to first responders and to law enforcement—I mean in the State and local communities.

I think it does provide for that in this particular legislation. And, again, as for the drafting of it, I would defer to DOJ, with respect to the provisions in the act itself.

Mr. BILIRAKIS. Well let me ask Mr. Fields that same question.

How would you respond to arguments that this legislation unduly restricts public access? Do you think that it does?

Mr. FIELDS. We don't believe that it unduly restricts public access. We do support public right-to-know and access to critical information. The people who live around communities need to have access to information about threats in their community, including OCA data.

But we do agree that there is a potential threat from terrorists that needs to be considered, and we believe that this bill, this legislation, strikes a proper balance between giving information to people who need to have the information, and minimizing the potential for that information to be posted on the Internet where it could be a tool for terrorists in this country.

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Mr. BILIRAKIS. Yes.

Mr. FIELDS. So we think that the restrictions that are in the bill, regarding dissemination of this information, strike a proper balance and are appropriate to make sure that people have access to data that they need, while at the same time, minimizing the potential threat of a terrorist attack in this country.

Mr. BILIRAKIS. Thank you, Mr. Fields.

Mr. Brown, to inquire.

Mr. BROWN. Thank you, Mr. Chairman.

I just have a couple of questions on—Mr. Burnham, if a facility is located on the Wisconsin—near the Michigan/Wisconsin border, but in Wisconsin, can State officials electronically share the offsite consequence data with local officials in Michigan under H.R. 1790?

Mr. BURNHAM. Again, on the drafting, I would defer to DOJ, with respect to provisions in that, and why certain provisions were put in there.

Again, what I looked at in this—okay, from the threat analysis standpoint, does this satisfy the concerns I have expressed both in previous testimony here as well as in writing? And I would defer to DOJ.

Mr. FONG. If I might have an opportunity to clarify. I have a pastor who says that God is in the details.

And I think the same applies to this proposal.

I don't believe there is an undue restriction. Paper versions of this information are going to be made available under (c)(6) in the libraries that we have heard about, and under (c)(3), in response to requests from the public, subject to guidance from EPA. It will——

Mr. BROWN. So can they be made available to another State?

Mr. FONG. By whom? By State and local officials? Or by——

Mr. BROWN. By local officials, say.

Mr. FONG. Local officials may retransmit, consistent with official use, and if it falls within that categorization, then it would be permissible.

Mr. BROWN. And the public has access, then, too? Or, no?

Mr. FONG. Well, not necessarily. It depends on what you mean by "it." What the legislation, or the proposed legislation, is most concerned with is the national data base in electronic form, and that is what would be restricted.

Other forms of dissemination are not restricted, so the paper forms would not. Analyses or mere discussion about information contained in these plans would not be restricted.

Indeed, our Office of Legal Counsel undertook a constitutional analysis, and the general rule is that the Government may not place restrictions on the dissemination of information by individuals once they are in lawful possession of that information. So once it is out in the public, it would be very difficult to restrict the information from spreading without constitutional problems. But this proposal does not do that.

This proposal draws a distinction between State and local officials who are given this information for official use, and in that sense, restricts the national, searchable part, which is of most concern, as you have heard.

Mr. BROWN. Okay.

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I would like to yield to my friend from Colorado, Ms. DeGette.

Ms. DEGETTE. Thank you very much.

I have just got a couple of quick questions for Mr. Burnham, but others who might know the answers can answer them.

As I read this bill, it clearly preempts State laws and subjects State and local employees to criminal sanctions for violation. I guess I would like to know what the process of consulting Governors, State legislators, attorneys general, or anyone else at the State level about this legislation.

Mr. BURNHAM. Again, on this, as I just mentioned to the previous question, I was not privy to a lot of the deliberations on this. This was drafted by the Department of Justice which we reviewed from a threat-analysis standpoint. Did it allay or address our previous concerns? And I would defer to the Department of Justice with respect to that particular question.

Mr. FONG. May I?

Ms. DEGETTE. Please.

Mr. FONG. I was not personally involved in the drafting of this proposal, but it is my understanding that there was an extensive interagency effort that did involve outreach and input from a variety of affected constituencies. We are obviously looking forward to and will commit to working with those interests and as we move forward with this proposal.

Ms. DEGETTE. I guess I would ask unanimous consent to have this answer supplemented in writing. If you folks could let us know exactly who was consulted and what the process was. You know I appreciate your goodwill toward thinking people were consulted, but I would like to know exactly what happened.

Mr. FONG. Can I——

Ms. DEGETTE. And in particular——

Mr. FONG. Can I——

Ms. DEGETTE. Excuse me—in particular, I am concerned because in Colorado, we have an open record statute that makes all of the information possessed by the local emergency planning committees public information and, therefore, accessible to the public. And I know many other States have laws like that, too.

Are you aware of that, Mr. Fong?

Mr. FONG. Yes, and we believe those laws are very important. However, to the extent those laws would require dissemination of the offsite consequence analysis portion of the RMP's, they would be preempted——

Ms. DEGETTE. Right.

Mr. FONG. [continuing] and the reason is that it makes no sense to restrict the dissemination in one arena and then have it simply disclosed in another forum.

Ms. DEGETTE. Well——

Mr. FONG. So, therefore, it is a necessary consequence of the threat that we are talking about.

Ms. DEGETTE. Well, I understand what your rationale is, but I think the States might have a different rationale. And I am wondering if you can provide to the subcommittee by June 7, copies of all of the State statutes, the open record statutes that will be preempted by this legislation?

Mr. BILIRAKIS. If the gentlelady would yield?

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Ms. DEGETTE. I would be happy to.

Mr. BILIRAKIS. I would ask the three gentlemen if they would be willing to receive questions, you know, in writing from us, and then respond in writing to us?

Now please keep in mind, however, the June 21 date. And June 21 means get through all the Congress, as well as signed into law by the President, which, you know, makes it pretty darned difficult. So, is that all right, Diana?

Let's do it that way; you would—responding to your question.

Ms. DEGETTE. Yes.

Mr. BILIRAKIS. [continuing] and additionally to any others that we would offer.

Ms. DEGETTE. Mr. Chairman, I don't think it should be difficult, for given this June 21 date and given the fact that we are not going to be in session for a while, I think it would be helpful to get this information, the information about which State laws would be pre-empted by June 7, and then any other questions that the committee wants to submit in writing I think would be fine.

I don't see how we can do a bill by June 21.

Mr. BILIRAKIS. If that is the unanimous consent request, and if the gentlemen are amenable, then the answer is "yes, without objection."

Mr. BROWN. And, Mr. Chairman, I would like to ask that the record be kept open for, say, 24 hours so that other questions—I have a couple other questions——

Mr. BILIRAKIS. Yes.

Mr. BROWN. [continuing] which we don't have time for, and other members——

Mr. BILIRAKIS. Yes, that is the point. I know we all have many questions.

Mr. BROWN. And they could answer as many of the questions by next week.

Mr. BILIRAKIS. You have been very helpful. I just—I am sorry that we have had such a thing here running back and forth, but that is the way it goes up here.

And now we have a vote on the floor, so let's—we will excuse this panel.

Thank you very much for your indulgence and for your cooperations.

And I would hope that the next panel maybe can start lining up so that we can move on when we get back.

[Brief recess.]

Mr. DEAL. [presiding] We want to welcome you back for the second panel, and I will introduce those panel members at this time.

Mr. Timothy Gablehouse, who is from Denver, Colorado, the Jefferson County LEPC; Mr. Lowell Strader, who is representing PACE Workers International Union, from Fairfax, Virginia; Mr. Paul Orum, who is coordinator of the Working Group of Community Right-to-Know, in Washington, DC; Mr. Martin Pfeifer, a sergeant with the Metropolitan Police Department here in Washington, and speaking on behalf of the Fraternal Order of Police; Mr. Thomas Susman, who is here on behalf of the Chemical Manufacturers Association; Mr. Tom Sloan, who is here on behalf of the American Library Association; and Mr. Mark Wheatley, who is the

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assistant chief of the Fairfax County Fire and Rescue Department, who is speaking on behalf of the International Association of Fire Chiefs.

I realize you are not in the order in which I introduced you. But we will proceed in the order in which you are seated. And, Mr. Wheatley, we will ask you—and I would ask each of you, if you would please, to try to keep your remarks to a summary of 5 minutes if at all possible, and we will have questions following that.

Mr. Wheatley.

STATEMENTS OF MARK S. WHEATLEY, ASSISTANT CHIEF, FAIRFAX COUNTY FIRE AND RESCUE DEPARTMENT, ON BEHALF OF INTERNATIONAL ASSOCIATION OF FIRE CHIEFS; THOMAS M. SUSMAN, ON BEHALF OF CHEMICAL MANUFACTURERS ASSOCIATION; PAUL ORUM, COORDINATOR, WORKING GROUP ON COMMUNITY RIGHT-TO-KNOW; MARTIN PFEIFER, SERGEANT, METROPOLITAN POLICE DEPARTMENT, AND ELECTED TRUSTEE, THE NATIONAL BOARD OF DIRECTORS, FRATERNAL ORDER OF POLICE; TIMOTHY R. GABLEHOUSE, CHAIR, JEFFERSON COUNTY LEPC; THOMAS W. SLOAN, DIRECTOR AND STATE LIBRARIAN, DELAWARE DIVISION OF LIBRARIES, ON BEHALF OF THE AMERICAN LIBRARY ASSOCIATION; AND LOWELL P. STRADER, INTERNATIONAL REPRESENTATIVE, PACE WORKERS INTERNATIONAL UNION

Mr. WHEATLEY. Good afternoon, Mr. Chairman, members of the subcommittee.

I am Mark Wheatley, assistant chief of the Fairfax County, Virginia, Fire and Rescue Department. I am here today on behalf of the International Association of Fire Chiefs, and I am also chairman of the Fairfax County Joint Local Emergency Planning Committee.

I trust that you have been provided a copy of my testimony and that you will have an opportunity to review it. My remarks today are a summation of my written testimony.

The IAFC very much appreciates the opportunity to appear before you today. The subject of this hearing is of vital importance to the America's fire and emergency services personnel.

You have heard testimony regarding to EPA's risk management program rule and a requirement to report worst-case scenarios. If a chemical release were to occur, these scenarios provide detailed information, including the estimated injury and loss of life, potential damage to the structures and the environment. In the wrong hands, this information could be used to target our Nation's communities for a terrorist attack.

After hearing our testimony earlier this year, the IAFC appreciates EPA's decision not to publish offsite consequence analysis on the Internet.

Now a second and equally important issue arises. The IAFC has grave concerns regarding the appropriate use of worst-case scenarios, given that it is still possible for a private citizen and organizations to obtain such information from the EPA through a FOIA request. Even though the EPA has decided not to post this informa-

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tion on the Web, others may be likely to do so and, thus, circumvent our communities' security interest.

With regard to emergency planning efforts, detailed worst-case scenario is of absolutely vital importance to local governments. It is imperative that public safety officials have timely and unimpeded access to this information on a continuous basis, and not be confronted with impractical or time delaying procedures. Furthermore, Federal statutes should not prohibit the sharing of this information with other fire and emergency organizations.

Realizing the importance of this information to local authorities, and given our concerns for the misuse, the IAFC supports the spirit and intent of congressional action that would allow the EPA to grant requests for information on a restricted basis, while providing direct access by local firefighters and other public safety officials.

When considering H.R. 1790 or similar legislation, it is important that the language be clear in its intent and explicit with regard to the required activities. Moreover, the term "local official" should be explicitly defined to include emergency response planners, public safety officials, and all—and I all reiterate "all"—fire service organizations: career, volunteer, or combination departments, alike.

From my personal perspective, as the chair of a local LEPC, and in light of the criminal penalties that may be imposed, I am asking that the Administrator of the EPA be directed to provide clear and concise guidance which outlines the conditions under which offsite consequence analysis information may be released to the public.

In conclusion, the offsite consequence analysis or worst-case scenario is extremely valuable information for emergency response personnel and is vitally important for local emergency planning purposes.

Second, Federal statutes should assure that dissemination of offsite consequence analysis be controlled and protected from mass distribution. Moreover, local fire and emergency organizations should not become a repository for such information for the purposes of disseminating it to the public, particularly in light of the criminal penalties.

And, finally, in recognizing the complexities of the situation before us, the proposed Chemical Safety Information and Site Security Act of 1999 or similar legislation should be quickly enacted. However, there needs to be additional clarification of existing language, including the resolution of the outstanding issues presented here today.

On behalf of the International Association of Fire Chiefs, I thank you for this opportunity to explain our concerns, and I am available to respond to any questions you may have.

[The prepared statement of Mark S. Wheatley follows:]

PREPARED STATEMENT OF MARK S. WHEATLEY, ASSISTANT CHIEF, FAIRFAX COUNTY FIRE AND RESCUE DEPARTMENT ON BEHALF OF THE INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

Good afternoon Mr. Chairman, members of the subcommittee, I am Mark Wheatley, Assistant Fire Chief of the Fairfax County, Virginia Fire and Rescue Department. I am also the Chairman of the Fairfax Joint Local Emergency Planning

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Committee, a committee responsible for hazardous materials emergency response planning for four jurisdictions in Virginia.

My remarks today are on behalf of the International Association of Fire Chiefs (IAFC). The IAFC is a professional association founded over 125 years ago in service to chief fire officers and managers of emergency service organizations throughout the international community.

We very much appreciate the opportunity to appear before you today. The subject of today's hearing is of vital importance to America's fire and emergency services personnel. We are the first responders to fires, medical emergencies, hazardous materials incidents, technical rescues, natural disasters and terrorist incidents.

As the subcommittee is aware, the Clean Air Act requires the Environmental Protection Agency (EPA) to implement a program to assist in the prevention of chemical accidents. We believe it is a good law. The EPA responded to this statute by publishing its Risk Management Program rule in June 1996. That rule requires some 66,000 facilities that store and use chemicals to develop a Risk Management Plan (RMP) and file it with the EPA. Part of the Risk Management Plan is an Offsite Consequence Analysis (OCA) which includes worst case data elements-or "worst case" scenarios. These worst case scenarios (WCS) contain detailed information about the chemicals stored at the facility, estimated injury and loss of life predictions, potential damage to structures and the anticipated environmental impact. They are a prediction of disaster for the specific facilities of interest.

The Clean Air Act further requires the EPA to make this information available to the public. Last year, we learned that the EPA proposed to make this information, including worst case scenarios, available to the public on the internet. We expressed our concern, shared by the FBI as well as other law enforcement and national security agencies, that making worst case scenarios available on the internet may increase the risk of terrorist attacks. The IAFC and the American fire service were pleased that the EPA agreed not to publish offsite consequence analysis data elements on the internet. This was a very responsible action by that agency and one which is greatly appreciated by fire and emergency services.

Now, a second and equally important issue arises. The IAFC has grave concerns regarding the inappropriate use of WCS information given that it is still possible for private citizens and organizations to obtain such information from the EPA and other agencies through federal and state Freedom of Information Act (FOIA) requests. These persons could then post the worst case scenarios on the internet. Our concern now is that even though the EPA has decided not to post worst case scenarios on the internet, others are likely to do so. It is our understanding that currently a FOIA request could require the EPA to turn over the entire database electronically or in paper format. The same might be true of documents and information held by localities for planning purposes.

Detailed worst case scenario information is vital to local governments for emergency planning purposes. It is imperative that local emergency responders have timely, unimpeded access to this information on a continuous basis. Local emergency responders should not be confronted with impractical barriers or time delays in accessing such critical information as a result of statutory or regulatory action.

Given the importance of this information to local authorities and yet our concern for its misuse, we support congressional action that would allow the EPA to grant requests for information on a restricted basis as proposed in the "Chemical Safety Information and Site Security Act of 1999." This proposed bill would allow local emergency planners, fire and emergency services professionals and citizens within a given community to obtain this important information without creating a one-stop shop for those that might use the information for sinister purposes.

When considering H.R. 1790 or similar legislation it is important that the specific language is clear in its intent and explicit in regard to required activities. Specifically, the use of the words "local official" should be explicitly defined to include emergency planners, fire and emergency services personnel. Otherwise, some confusion may exist as to who the intended local recipients of information are and their responsibilities regarding the use and dissemination of Offsite Consequence Analysis data. In addition, it should be clear that information is accessible by all fire and emergency service organizations regardless of whether the organization is a career, volunteer or combination department.

And, from my personal perspective as the chair of a local emergency planning committee, I would ask that the Administrator of the Environmental Protection Agency be directed to provide clear and concise guidance which outlines the conditions under which Offsite Consequence Analysis information may be released to the public, particularly in light of the proposed criminal penalties which may be imposed for violating provisions of this Act.

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In conclusion: 1. The Offsite Consequence Analysis-or "worst case" scenario data is very valuable information for fire and emergency service responders. It is vital for local emergency planning and response purposes. 2. The Federal statutes should not prohibit sharing of access to worst case scenario information between fire and emergency service personnel from other jurisdictions involved in joint planning. Furthermore 3. Local fire and emergency services should not become a repository of the worst case scenario information for the purpose of disseminating it to the public. Federal statute should ensure this. 4. The dissemination of the Offsite Consequence Analysis data should be controlled and protected from mass distribution. Finally 5. The proposed Chemical Safety Information and Site Security Act of 1999 or similar legislation should be enacted quickly. However, there needs to be additional clarification of existing language which addresses the outstanding issues presented here today regarding the use and dissemination of worst case scenario information.

On behalf of the International Association of Fire Chiefs, I thank you for the opportunity to explain our concerns. I am available to respond to any questions you may have.

Mr. DEAL. Thank you, sir.

Mr. Susman.

STATEMENT OF THOMAS M. SUSMAN

Mr. SUSMAN. Thank you, Mr. Chairman.

I am here today on behalf of the Chemical Manufacturers Association which represents over 90 percent of the domestic capacity for producing basic chemicals. CMA, incidentally, supported the Clean Air Act amendments of 1990 and its risk management provision, and its members have been working in communities for quite some time to communicate on these local issues.

I am going to summarize the three points made in my formal testimony today, and also take leave to address three other points that were raised by members' opening comments, in case we get tied up with the bells again.

The bill attempts to achieve a balance between public right-to-know and the obligation of Government to protect public safety. And it is important to remember that the balance is not right-to-know versus no-right-to-know, but right-to-know versus public safety. And the language of the legislation submitted by the administration has a few serious flaws that can be corrected, but they are flaws that Congress and this subcommittee need to address.

The first flaw is the proposed electronic dissemination through depository libraries. You have a library community witness this morning who will address that issue, generally, but I would point out that this provision imposes upon GPO and the Nation's 1,300 depository libraries responsibilities, burdens, and requirements that are simply unrealistic and unworkable. Woe to the public librarian who allows someone to photocopy in the public reading room an OCA and thereby becomes, under this statute, a criminal.

CMA urges the committee simply address this problem by deleting reference to depository library dissemination from the bill.

The second major flaw is the bill's failure to require, and, indeed, its inhibition, on identification of persons requesting OCA data. The bill doesn't require a written request for OCA information. Every agency in Government requires written request for every—even the most trivial Freedom of Information Act request, yet this bill does not. And it only authorizes, it does not mandate the Administrator to keep track of requesters. Furthermore, even that light touch is undermined by the provision that the Administrator can maintain identity information, only to the extent that collection

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is relevant and necessary to accomplish a legal purpose required to be accomplished by a statute.

Mr. Chairman, I know of no statute, Federal or State, which imposes such a requirement, and CMA, thus, urges the committee both to insert the word "written" before the word "request" in the statute so that it does require a written request, and to delete the qualification that appears to allow maintenance of requester data only if required to be accomplished.

The third flaw is the bill's dependence upon guidelines that are set by unreviewable and standardless agency discretion. The Administrator has the authority, through guidelines, to set limits on the maximum number of requests, but there is no indication on the part of the administration in transmitting the bill or so far on the part of any Member of Congress as to what that standard ought to be. Are we talking about one request per year for up to three sites of offsite consequence data? Or are we talking about 50 requests per year for up to 100 or 500 sites per requests? These are very, very different, in terms of their implications of requests for individual copies being used ultimately to get this information on the Internet.

This is an important issue and Congress ought to indicate what it thinks the answer is. CMA suggests one request for three facilities plans per year, but obviously we are talking about a relatively modest number.

And the second problem is that these important questions are to be answered by not notice in comment rulemaking, but by guidelines that are not judicially reviewable. So while the Administrator must consult with unnamed appropriate Federal agencies, and EPA assures us that they will talk to the public and State and local governments, for 50 years, the Administrative Procedure Act has told us that the way to ensure both accountability of the agency and public participation and confidence in the setting of standards is through notice and comment rulemaking, and that can be done without delay.

Now the additional problems that aren't dealt with in my testimony but have been raised this morning, let me touch on just a moment.

This legislation will preempt State freedom of information and open records laws. While it certainly will—the answer to the question earlier asked to the Justice Department official, "How many?" The answer is "All of them, we hope." This is not unusual; this is not unprecedented. Every time Congress goes to protect records, the Buckley Amendment of 1974 relating to school records, criminal information, history through Federal legislation, Medicaid information, healthcare information—whenever Congress enacts an statute where information flows to the States, it proscribes State redissemination without restriction. While it is perfectly constitutional, the commerce clause contemplates it. These statutes have been upheld against constitutional challenge, and the States can avoid preemption. They simply don't have to obtain the information.

What about dealing with access to volunteer firefighters or LEPC members who aren't employees. It seems to me a simple amend-

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ment could handle that, or they could be considered consultants or agents of the State, already dealt with through the legislation.

And, finally, let me return to what I consider is really the basic issue, that this will roll back the public's right to know. This right was originally created by Congress. It is a right to know that the manufacturers of chemicals, along with environmental advocates and Government agencies, all support. But it is a right that has to be tempered, as I said in my opening. Tempered by an equal right to protection against the traumas caused by a terrorist attack on a nearby chemical facility. And so the legislation needs to be designed not just to look at the access part, but the protection part—and I understand, no right to Internet-accessible, electronically searchable data that is necessary to allow the community to understand, work with, and respond to potential chemical hazards.

Thank you, Mr. Chairman. I will be pleased to participate in responding to any further problems with this legislation that might arise.

[The prepared statement of Thomas M. Susman follows:]

PREPARED STATEMENT OF THOMAS M. SUSMAN ON BEHALF OF THE CHEMICAL MANUFACTURERS ASSOCIATION

Good afternoon, Mr. Chairman and members of the Subcommittee. My name is Tom Susman, and I am a partner with the law firm of Ropes & Gray. I appear before you this afternoon on behalf of the Chemical Manufacturers Association. CMA is a trade association that represents over 90% of the domestic capacity for producing basic industrial chemicals.

I am here teday to comment on the Administration's proposal, H.R.1790, as introduced by Chairman Bliley. This proposal is intended to deal with the issue of dissemination of worst case scenario data via the Internet. I would like to commend Chairman Bliley for his leadership on this important matter. Thanks are also due Subcommittee Chairmen Bilirakis and Upton, as well as other members of the Commerce Committee, for their excellent work.

As you know, worst case scenario data provide a graphic depiction of the worst possible incident that could occur at a manufacturing facility. An unintended consequence of the dissemination of this data is that it will provide what the intelligence community refers to as "targeting quality" data. This data will assist terrorists in choosing their targets.

This language was produced by an interagency work group led by the Department of Justice. The process achieved important results. It established a framework which brought all affected agencies—Department of Justice, National Security Council, FBI and EPA (and others) to the table to discuss the unintended consequences of government information dissemination programs, particularly those which could facilitate terrorist activities. It also placed primary responsibility for dealing with these issues in the hands of the Department of Justice and other security agencies—where it belongs.

The process focused all stakeholders on the need to achieve a balance between public right-to-know and the obligation of government to ensure that sensitive information does not get into the wrong hands, that is, to ensure that communities are both safe and informed. The importance of this process and its success in bringing the right parties together to undertake a cross-cutting look at these issues cannot be overstated. CMA supports the Administration's effort.

The language proposed by the work group, however, has some serious flaws which I will describe in detail. I stress that these shortcomings can be fixed and that they must be fixed so that this bill can be signed into law before June 21, 1999—the date by which worst case scenario must be submitted to EPA. After providing a brief overview of the background on this issue, I will proceed to discuss those areas where the bill needs to be improved.

BACKGROUND.

CMA supported the Clean Air Act Amendments of 1990 and the Risk Management Plan (RMP) provisions of Section 112(r). CMA worked closely with EPA in the development of its RMP regulations, and it has conducted extensive and early com-

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munity-based outreach to make sure that its members are prepared to comply with the rule. Indeed, many of them began communicating with their local communities about these issues several years ago.

CMA believes that the public has a right to know about the risks, as well as the benefits, associated with the operation of those facilities. Ever since Congress began considering the concept of Risk Management Plans in the late 1980s, our central concern has been to ensure a balance between two important public policy goals: ensuring that communities are both safe and informed.

In the last year or so, however, agencies charged with assuring our nation's internal security—the Department of Justice, the National Security Council, and the FBI (to name a few), expressed serious concerns about one aspect of EPA's planned implementation of the RMP rules. That aspect was EPA's plan to put offsite consequence analyses (OCAs), including those involving worst-case scenario releases, into an electronically searchable database that would be accessible via the Internet. These agencies concluded that such an arrangement would allow terrorists and other criminals to easily identify promising targets and to rank those facilities by the scale of their worst case offsite consequences. Prompted by the experts at the security agencies, the Administration initiated an interagency review process to evaluate this threat, and to develop new ways to address it and still serve the public's right to know.

The first step of this process was EPA's decision early this year not to post a searchable electronic database of OCA data on the Internet. CMA commended EPA for making this tough decision.

The second step of the process was to ensure that EPA's decision could not be undermined by third parties who could obtain the electronic data under the Freedom of Information Act (FOIA). Again, the security agencies, EPA and the Department of Justice thought carefully about how to accomplish this goal without making changes to FOIA itself. The result was the bill currently before this Committee.

MAJOR FLAWS.

There are three major problems with the bill. I will briefly touch on each one. All of these are straightforward. They can be remedied in a prompt manner. Recommended changes are also provided.

Electronic dissemination through depository libraries.

The bill recognizes that risk management plans will be made available at thousands of EPA, state and local government offices throughout the nation. It also mandates that every risk management plan, including OCA data, be "available in paper or electronic form for public inspection, but not copying, during normal business hours," from EPA. On top of that, however, the bill requires every risk management plan to be similarly available from *Government Printing Office depository libraries.* This provision imposes upon the GPO and the nation's thousands of federal depository libraries responsibilities, requirements, and burdens that are unrealistic, undesirable, and, in the end, unworkable. Let me explain why:

- First, federal depository libraries are not exclusively, or even primarily, federal institutions. They may be private (for example, university libraries), or public (for example, local libraries). There are over 3000 of them in all 50 states, D.C., and the territories. Present law and regulations *require* that depository libraries make government publications, paper and electronic, available to the public without charge *and without restrictions.* Thus, the entire depository system is grounded upon principles running counter to the objectives and requirements of the bill.
- Second, depository libraries do not have the personnel or resources to monitor whether a person copies paper records or prints or copies electronic records. Nor does GPO have the ability to enforce such restrictions. Library computer workstations ordinarily allow patrons to make copies of online materials, and they are not necessarily located where supervision is possible. Libraries would have to invest in facilities or equipment or both to enforce the requirements of the bill. Moreover, even as to paper copies of OCAs, libraries locate copying facilities to make it easy for patrons to photocopy reference materials; mandating segregated, access-controlled "read but don't copy rooms" in libraries simply is not feasible.
- Third, the library community historically has opposed restricting or monitoring access; the American Library Association was a lead plaintiff challenging federal restrictions on access to indecent material on the Internet. Libraries have shown a disinclination to, and cannot effectively, monitor copying of CDRoms or paper or disks, as would be required by the bill.

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- Fourth, "GPO Access"—the program for dissemination of electronic online information to depository libraries—is an open system available to the public generally. Currently, no system is in place for secured transmission of information solely to depositories. Nor is one just around the corner.
- Fifth, library systems and shelves are not secure. The goal of libraries is to get information out freely and expeditiously to the public, not to restrain or censure it. Sending OCA data electronically to potentially hundreds or thousands of depository libraries is an invitation to disaster.

Accordingly, CMA urges that the Committee strike the phrase ", including in Government Printing Office depository libraries' from page 5, lines 18-19 of the bill.

Identifying requesters.

The second major flaw with the bill is its failure unambiguously to require the system to identify persons requesting OCA data. First, section 2(c)(3)(A) does not require a "written" request—"any request for off-site consequence analysis information" seemingly will do. Even FOIA—which would not apply under this bill—requires a written request for information.

Second, section 2(c)(9) merely provides that "the Administrator may collect and maintain records that reflect the identity of" those seeking access to OCA data. This is permissive, not mandatory. More importantly, even the authority to maintain records of requesters' identities is severely undermined by the qualification that the Administrator may do so "only to the extent that such collection is relevant and necessary to accomplish a legal purpose... that is required to be accomplished by statute or by executive order of the President." I am not aware of such a requirement in *any* statute. Presumably it may be inferred from *this bill,* via the bill's command that EPA establish conditions for release of OCA information that include the maximum number of requests any single requestor can make. After all, the agency could not effectively enforce such a limitation without keeping records of requesters. But once any time period contemplated by the guidelines has expired (for example, one year if the guidelines allow three requests per year), the agency would no longer have even an implied "requirement" to maintain this information. Additionally, few if any State statutes require collection of requester identity information, so this qualification may prevent States from acquiring information deemed useful to guarding against misuse of the data, even to the extent of causing public harm.

Finally, the bill's reference to the Privacy Act makes no sense, since the Privacy Act exempts from its protections any request for personal information disclosable under the FOIA, and FOIA in turn has been read uniformly to require disclosure of requests for information of this kind. (For example, FOIA requests are routinely disclosed under FOIA.) Hence, any suggested protection of requester identity records is ephemeral. The bill should be clear that there is no such protection—one of its fundamental purposes is to allow agencies to track who is requesting OCA data. This could enable EPA to determine if someone is about to cause an imminent hazard by posting electronically a stolen copy of the entire OCA database. It could also help identify the perpetrators of a terrorist act, if one occurs at an RMP facility.

Accordingly, CMA urges the Committee to insert the word "written" before the word "request" on page 3, line 19 and to delete the qualification in both clauses of subsection 2(c)(8) that appear to allow maintenance of requester identity only if "required to be accomplished by statute or by executive order of the President."

Unreviewable and standardless agency discretion.

The third major flaw in the bill has two parts: its failure to require EPA to go through rulemaking to establish conditions on access to OCA data, and its failure to establish any standards to guide EPA in this exercise.

Section 2(c)(3)(A) allows the Administrator to restrict access to paper OCAs, and this restriction is binding on States and local government employees under section 2(c)(5). Yet these provisions give absolutely no hint of standards for EPA to follow. (Nor do the Justice Department's transmittal letter or section-by-section analysis.) May the Administrator limit the maximum number of request or facilities that may be requested to one per requester, period? To 1000 facilities or 50 requests per requester each year? Congress should certainly care about these questions, given the time and energy it is investing in this legislation. The underlying purposes of the legislation could be achieved with a limitation to one request for three facility plans per year; why authorize more?

Moreover, these important questions are to be answered not by notice and comment rulemaking, but only by guidelines that, under section 2(d)(1), will be unreviewable. True, the Administrator must consult with unnamed "appropriate Federal agencies." But it need not consult with the public, State or local govern-

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ments, or affected industry. And whatever the consultation process, there is no opportunity for public comment or for judicial review.

Accordingly, CMA urges the Committee to combine paragraphs 2(d)(1) and 2(d)(2) in such a way that EPA must conduct notice and comment rulemaking to establish the access conditions required by the bill. This rulemaking could be expedited; for example, these rules could be proposed within 45 days and finalized 45 days later. CMA also recommends the Committee specifically name the Department of Justice as among the "appropriate Federal agencies" with which EPA must consult (page 8, line 1).

OTHER ISSUES.

Two other features of the bill raise questions, although neither rises to the level of the three concerns just discussed.

- *Enforcement.* The bill is unclear about how its limitations on disseminating OCA data would be enforced. While criminal penalties are included under section 2(c)(8), there may be nothing to penalize if the guidelines allow nearly unfettered disclosure of OCAs. For example, is a violation of the guidelines a violation of "a restriction or prohibition established by this section?" And woe unto the public library employee (a local government employee) who commits a criminal act by failing to stop a patron from copying an OCA in the reference room.
- *Order authority.* The purpose of section 2(f) is even more unclear. Presumably it would allow EPA to issue an order preventing someone from posting on the internet a stolen copy of the OCA database, or that person's own reconstruction of the database. If so, that is probably useful. But whether the Administration envisioned this or something else is unclear.

CONCLUSION.

The FBI and other law enforcement and national security agencies have determined that unrestricted access to OCA information, especially electronic data, would facilitate terrorist targeting of chemical facilities in the United States. EPA agreed. Yet these agencies, State and local governments, environmental and union advocates, and the chemical industry also agree that some form of public access to this information is highly desirable.

Mr. Chairman, H.R. 1790 is an important attempt to balance and reconcile these two goals. This bipartisan bill represents the collaborative effort of affected agencies. The bill has flaws that could result in it failing to accomplish its important purpose, but these flaws can be readily addressed by the solutions CMA has outlined above. We urge the Committee to adopt them, so that Congress can promptly enact this vital legislation.

Mr. DEAL. Thank you.

Mr. Orum.

STATEMENT OF PAUL ORUM

Mr. ORUM. Thank you.

I am Paul Orum, the coordinator of the Working Group on Community Right-to-Know, environmental and public interest groups; I have held that job for 10 years.

Today we are here to consider ways to reduce the risks of catastrophic chemical releases, whether resulting from terrorism or so-called everyday accidents.

The Clear Air Act gives us two basic tools to do that: right-to-know and regulation. The proposed bill seriously impedes the public's right to know and yet presents no other tools to fight terrorism or reduce chemical accidents.

We can't pretend that just restricting right-to-know, alone, will somehow solve either the terrorism or chemical safety problems. Yet, that is what this bill does. And by restricting right-to-know, it threatens to maintain what I would call a "know nothing, do nothing" relationship between Government and industry in which we end up with the worst of both worlds—no effective right to know, and no real action to protect public safety.

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If Congress is serious about reducing the risk of terrorism, I would propose a prevention hierarchy parallel to that used in the Pollution Prevention Act, a multiple barriers approach, if you will.

First, reduce the problem at the source, wherever feasible. Here in Washington, DC, sitting right here, the Blue Plains Sewage Treatment Plant has enough chlorine gas onsite to affect us if it were all released. If they switched to sodium hypochlorite, bleach, they would not have that offsite capacity to cause harm. So you reduce the problem at the source through inherently safer technologies where you can. Where you can't, go to secondary containment. Where that might fail, improve site security. Where those measure might fail, establish adequate buffer zones. It is a multiple barriers approach.

If Congress believes, and the industry believes, that the threat of terrorism justifies restrictions on the public's right to know, then both are obligated to take real steps to remedy those hazards.

Effective right-to-know laws make companies, workers, and communities more careful and vigilant. The toxics release inventories and offsite—as an example, credited with a 43-percent reduction in releases over a 10-year period.

We could have similar benefits in rearouse of reducing the risks of catastrophic chemical releases, through accidents or terrorism. A TRI-equivalent reduction of 43 percent in deaths over a recent 10–year period would be 1,100 lives saved.

Let's look, though, exactly or more precisely at what this—how this law would restrict public information. Imagine that 6 months from now, and one of your constituents has a basic question. Could facilities near her home have a catastrophic chemical release due to a year 2000 computer failures?

She walks into your office and tells the following story.

She started with EPA's online data base, RMP information, but she could learn only that there were dangerous chemicals nearby but couldn't learn, without further inquiry, whether a chemical spill could hurt her family at home. So she had to inquire, using facility-specific request to EPA—guesses really—which facilities in her town might affect her. But she quickly ran out of the facility-specific requests because they were limited.

She couldn't get the information, nor was she able, therefore, to learn about hazards elsewhere, where her parents lived, where her children go to school, or where she might want to move to.

So, in my scenario, she asked her husband to make further requests, but he didn't want to pay the fees. And, further, he objected to the fact that the Government was tracking and limiting his access to information.

So she asked her neighbor, a volunteer firefighter who served on the LAPC, but he said the State law made him an employee, and he was afraid to go to jail if he gave her the information.

He suggested the library, but the librarian said they had decided not to give it out because they didn't want to police their patrons' use of information; they didn't have staff.

He said, call the company. So he called a friend who worked at a refinery, and he said they didn't put out vulnerability circles anymore because the Governments says it is a security risk. He said, "Call EPA."

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So she tried the EPA regional reading room, but the data base there didn't include any information that would help her to identify the decisionmaker who was causing the hazards.

So she called the research at the university, and he couldn't get full information either, through basic studies.

This bill creates big disadvantages for citizens who seek basic information, including needless expenses, intrusion on personal information, and high opportunity costs. The question is how to preserve the public's right to know, while making progress against terrorism.

We propose a two-part strategy. First, any company that wants to withhold information from the Internet should, for a limited period of time, have to request a waiver to do so and renew it annually. For any company that requests a waiver, they should have to enter a hazard reduction and site security program using the multi-barriers approach above.

With that approach, Congress would ensure that no company falls through the cracks. Every company addresses the risks of hazards, and all the companies are on the track to fully honor the public's right to know.

I would be pleased to answer any questions and also point out this example from 1993 was in a newspaper of what it looks like when worst-case scenarios are published in a newspaper.

[The prepared statement of Paul Orum follows:]

PREPARED STATEMENT OF PAUL ORUM, WORKING GROUP ON COMMUNITY RIGHT-TO-KNOW

My name is Paul Orum. I am the coordinator of the Working Group on Community Right-to-Know, a network of public interest organizations concerned with the public's right-to-know and freedom to communicate about toxic pollution and chemical hazards. I testified before this subcommittee on February 10, 1999, and submitted answers to follow-up questions on March 31, 1999. In those materials I described the public purposes served by a complete, national database of chemical hazard information. I appreciate this opportunity to address the proposed "Chemical Safety Information and Site Security Act of 1999" (H.R. 1790).

Today we are considering ways to reduce the risks of catastrophic chemical releases, whether resulting from "terrorism" or "everyday" accidents. The Clean Air Act, section 112(r), contains two basic strategies to reduce chemical releases: right-to-know and regulation. The proposed bill seriously impedes the public's right-to-know and presents no other significant measures to fight terrorism or reduce chemical accidents.

This bill impedes the public's right-to-know. It requires the government to track citizens' information-request behavior. It limits citizens' opportunities to request public information. It threatens to jail librarians, police, and fire fighters if they warn people about the worst hazards. It restricts citizens' ability to communicate about chemical hazards. It shields those who create hazards from public scrutiny. It establishes new fees and poses high opportunity costs. And it denies researchers basic access to "right-to-know" information.

At the same time, this bill offers no serious, practical steps for companies to reduce these chemical threats to public safety, for example by using inherently safer technologies, adding safety equipment, improving site security, or establishing buffer zones to protect surrounding populations.

We cannot suppose that restricting right-to-know alone will somehow solve either terrorism or chemical safety problems. Yet by restricting right-to-know the proposed bill threatens to maintain a "know-nothing, do nothing" relationship between government and industry. We may end up with the worst of two worlds—with no effective right-to-know and no real action to protect public safety.

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I. Real Steps to Reduce Hazards: A Multiple-Barriers Approach

If Congress is serious about reducing chemical releases—whether caused by "terrorists" or "ordinary" events—then we propose a prevention hierarchy parallel to that used in the Pollution Prevention Act:[1]

1. *Adopt inherently safer technologies* where feasible that eliminate the possibility of a catastrophic chemical release (such as replacing chlorine disinfectant with sodium hypochlorite—bleach—at water treatment plants).[2]
2. *Use secondary containment, control, or mitigation equipment* (including hardening facilities against attack) where feasible to address vulnerabilities that cannot be reduced through inherently safer technologies;
3. *Improve site security* where feasible to address vulnerabilities that cannot be reduced through inherently safer technologies and secondary safety controls;
4. *Establish adequate buffer zones* between facilities and surrounding populations (including residences, schools, hospitals, senior centers, shopping malls, stadiums, and other population centers) to address vulnerabilities that cannot be addressed through safer technologies, secondary safety controls, or site security.

This "multiple-barriers approach" provides a context for action by the public, government, and industry to protect public safety at the federal, state, and local level.[3]

If the chemical industry believex that the threat of terrorism justifies restrictions on the public's right-to-know, then the industry is obligated to take real steps to remedy those hazards. If Congress believes that the threat of terrorism justifies new restrictions on the public's right-to-know, then Congress is obligated to take meaningful steps to ensure public safety.

II. Right-to-Know: What Gets Measured Gets Managed

Effective right-to-know laws make companies, workers, and communities more careful and vigilant. For example, publication of Toxics Release Inventory data has prodded companies to improve environmental performance. The U.S. EPA last week announced that reported toxic releases to the environment have declined some 45 percent under the TRI program since 1988. However, it is important to remember that citizen organizations and the news media *with access to well-organized data serve as an important link to the public.*[4]

Effective access to RMP information, in conjunction with a hazard reduction and site security program, could similarly reduce the risk of catastrophic chemical releases, whether caused by "terrorists" or "ordinary" events. (For comparison, a TRI-equivalent 43 percent reduction in deaths from chemical accidents would have saved over 1,100 lives between 1987 and 1996.[5]) People would be more vigilant, and companies would maintain fewer hazards and be better prepared to address hazards that remain. However, the proposed bill truly impedes such effective access.

III. Restrictions on Right-to-Know: A Hide and Seek Odyssey

Imagine the odyssey of a person who wants basic information under the proposed bill (H.R. 1790). It's six months from now and one of your constituents has a basic question: could facilities near her home have a catastrophic chemical release due to year-2000 computer failures? She walks into your office and tells the following tale of frustration.

She started with EPA's on-line database, RMP*Info. But she learned only that there are dangerous chemical practices nearby, but could not learn (without further

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[1] The Pollution Prevention Act of 1990, Section 6602(b), establishes as the national policy of the United States a hierarchy for the prevention and management of toxic chemicals in production waste.

[2] Incorporating "technology options analyses" into research and development before major changes that require a facility to submit an updated Risk Management Plan can identify such prevention opportunities. See Ashford, et. al., *The Encouragement of Technological Change for Preventing Chemical Accidents: Moving Firms From Secondary Prevention and Mitigation to Primary Prevention,* U.S. Environmental Protection Agency, July 1993.

[3] Diverse constituencies with an interest in chemical hazard information include: educators, researchers, and university-based hazard reduction centers; national and local news media; the general public; community groups, resource centers, and citizen advisory councils; social justice, environmental, and labor organizations; facility environmental managers (in large and small businesses); investors, lenders, and insurers; physicians networks, health departments, nursing homes, and hospitals; emergency responders (police, fire, medical services, and emergency planners); school officials and parent-teacher associations; planning commissions, zoning boards, and public works departments; elected officials, and others.

[4] Frances Lynn, Jack Kartez, and Cheryl Connelly, *The Toxics Release Inventory: Environmental Democracy in Action,* U.S. EPA (document number 700-F-92-001), 1992.

[5] The Chemical Safety and Hazard Investigation Board reported 2,565 deaths from chemical accidents in *The 600K Report: Commercial Chemical Incidents in the United States, 1987-1996,* February 1999.

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inquiry) whether a chemical spill could hurt her family at home. So she therefore had to inquire, using facility-specific requests to EPA, which facilities in her town might affect her family—but was allowed only a limited number (as yet unspecified) of information requests. When she exceeded EPA's information-request allowance, she was not able to learn about hazards where her elderly mother lives, where the children go to school, or where her family looked at buying a new home. (Her mother, on fixed-income disability, couldn't get or understand the information herself.) So she asked her husband to make further requests. But EPA charges information request fees, and he balked at what he called an expensive game of hide-and-seek over chemical industry hazards. Further, he didn't want to participate in a "right-to-know" program that required the government to track and limit his information-request behavior.

So she asked her neighbor, the volunteer fire fighter, who serves on the Local Emergency Planning Committee (LEPC). But he said that state law made him a public employee, and that he was afraid of going to jail if he told her about the most dangerous facilities, because he didn't think the state had an official policy to give out the information. He suggested the library. But the librarian said they decided not to provide the data because they objected to policing patron's use of information. The librarian suggested calling the companies directly. So she called a friend who works in a refinery, but he said that they didn't put out vulnerability circles anymore because the government says it's a security risk. He suggested EPA. So she drove 250 miles—one way—to the EPA regional office reading room. But the database didn't have facility identifying information and so now she couldn't identify the decision-maker causing the hazard (and EPA had decided not to identify the most dangerous Y2K facilities).

She called a researcher at the university. He said that he thought that nearby chemical facilities were depressing housing values—but couldn't get complete data to find out. He couldn't even find out which companies had successful company-wide inherent safety policies, or even which companies had successfully reduced hazards.

So now she's in your office asking whether you, as her representative, can get her the information about potentially dangerous Y2K facilities.

The bill creates immense disadvantages for citizens who seek basic information, including needless expenses, intrusion on personal information, and high opportunity costs.

IV. The Right-to-Know Standard: Disclose and Ensure Safety

The question is how to preserve the public's right-to-know while making progress against terrorism. We propose the following strategy:

- First, require RMP facilities to that want to withhold worst-case scenario information from the national, on-line RMP*Info database to file an annual waiver request (only for a limited number of years) with the U.S. EPA. Without a waiver request, EPA automatically puts full information on-line in RMP*Info.
- Second, require facilities that file such a waiver request to enter a "hazard reduction and site security program" until the facility is safe enough to talk about on the Internet (following the prevention hierarchy listed above).

With this approach, Congress would ensure that companies address the risk of terrorism, while putting all facilities on a track to fully honor the public's right-to-know.

I would be pleased to answer any questions.

Mr. DEAL. Thank you.

Mr. Pfeifer.

STATEMENT OF MARTIN PFEIFER

Mr. PFEIFER. Good afternoon, Mr. Chairman, and, distinguished members of the House Subcommittee on Health and Environment.

My name is Sergeant Marty Pfeifer, and I am a 26-year veteran with the Metropolitan Police Department in Washington, DC. I currently serve as the elected trustee from the District of Columbia on the National Board of Directors for the Fraternal Order of Police, which is the largest organization of law enforcement professionals in the Nation, representing over 277,000 men and women.

I am here this afternoon at the request of Gilbert Gallegos, national president of the Fraternal Order of Police, to express our

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concern about an important public health and safety issue. As the Nation's largest law enforcement organization, our members, along with other emergency responders, have front-line responsibility for protecting the public from incidents involving hazardous materials, including those initiated by terrorist organizations.

The Fraternal Order of Police is strongly opposed to the dissemination of sensitive data over the Internet which can be useful to terrorists. Our most recent concerns with respect to this issue center on worst-case scenario data that the Environmental Protection Agency will collect from 66,000 facilities as part of its risk management program under the Clean Air Act.

The data describes, in graphic detail, the worst possible incident that could occur at a manufacturing facility.

The Clean Air Act amendments of 1990 required EPA to disseminate worst-case scenario data to the public and to the local emergency responders, but did not specify how this data would be provided. After pressure from the intelligence community and Congress, the EPA reconsidered their initial plan to post this sensitive data on the Internet. In fact, at a recent congressional hearing, EPA objected to any party placing the worst-case scenario data on the Internet.

Now, despite EPA's objections, certain third-party interest groups have indicated they will use Federal information access procedures to obtain this national electronic worst-case scenario data base from EPA and then place it on the Internet. We are very much alarmed by these irresponsible pronouncements, as should all Americans.

The bill before the subcommittee today, H.R. 1790, the Chemical Safety Information and Site Security Act of 1999, addresses the need for appropriate controls and safeguards on the dissemination of sensitive worst-case scenario data. The legislation would make such data available to the public, but would not permit Federal, State, or local governments from making the information available on the Internet or in an electronic form which could be easily collected and utilized by terrorists.

We do believe, however, that such sensitive data, which could be exploited with catastrophic results, needs to be subjected to greater control by law enforcement agencies responsible for protecting national security.

Specifically, the legislation would permit worst-case scenario data to be available to the Government Printing Office depository libraries, in addition to EPA, State, and local government offices around the country. Federal depository libraries are not always Federal institutions and include many local, public, and university libraries, all of which are required by current law to make Government publications, in paper and electronic format, available to the public. Depository libraries do not have the personnel or the resources to be able to properly supervise persons accessing the data to ensure it is not copied in any format. Library shelves and online systems are not secure and are designed to make access to all information easily accessible for patrons—which is precisely the scenario we are trying to avoid. Their mission runs counter to the aims of the legislation, this subcommittee, the EPA, the Department of Justice, and other law enforcement agencies.

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The legislation does not consider the online information system's GPO Access, which disseminates information directly to depository libraries via the Internet. The system is open to the public and has no safeguards in place to transmit information securely, and no system for the secure transmission of such data is currently under consideration by GPO.

We also believe that the bill would be substantially improved by requiring the identification of all persons requesting access to worst-case scenario data. The bill, in its current form, does not require written request for access—but specifies "any" request. The Fraternal Order of Police strongly supports mandating the submission of a written request before access to information with this degree of sensitivity is granted. Information of this nature should be accessible only under controlled conditions.

In the same vein, the bill provides only that the Administrator may collect data and maintain records that reflect the identify of persons seeking access to the worst-case scenario data. Further, the bill qualifies this authority by stating that maintaining data of the requesters' identities should only be collected if relevant and necessary to accomplish a legal purpose, by statute or executive order. While it can be assumed that such recordkeeping would be required under regulations setting a maximum number of requests from one individual, we believe that maintaining records is absolutely necessary to maintain control of this sensitive data and deter its potential misuse.

Law enforcement and national security agencies are correct in their determination that unrestricted access to worst-case scenario data on chemical facilities, especially via the Internet, would allow terrorists to chose with great precision and accuracy targets for their attack.

The EPA is now in agreement with this assessment, and we should all be proud of the strong bipartisan cooperation with which Congress and the administration have approached this issue.

We must strike the correct balance between public access to this information for legitimate purposes and the very real need to protect American citizens from the real threats of terrorism. Appropriate and necessary restriction of the worst-case scenario information by law enforcement and/or national security authorities, along with recordkeeping on requesters, will greatly improve this legislation which accurately identifies the problem, but does not provide an adequate solution.

On behalf of National President Gallegos and the membership of the Fraternal Order of Police, I would like to applaud Congressman Bliley for his leadership on this issue.

I sincerely hope that my testimony here today will improve H.R. 1790 and allow it to protect our Nation's chemical facilities from terrorist attack without compromising the public's right to know.

I want to thank you, Mr. Chairman, and the members of this distinguished subcommittee, for the opportunity to share with you the views of the Fraternal Order of Police on this important matter.

I would be pleased to answer questions.

[The prepared statement of Martin Pfeifer follows:]

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PREPARED STATEMENT OF SGT. MARTY PFEIFER, NATIONAL TRUSTEE, GRAND LODGE, FRATERNAL ORDER OF POLICE

Good afternoon, Mr. Chairman and distinguished Members of the House Subcommittee on Health and Environment. My name is Sergeant Marty Pfeifer and I am a 26 year veteran with the Metropolitan Police Department in Washington, D.C. I currently serve as the elected Trustee from the District of Columbia on the National Board of Directors for the Fraternal Order of Police, which is the largest organization of law enforcement professionals in the nation, representing over 277,000 men and women.

I am here this afternoon at the request of Gilbert G. Gallegos, National President of the Fraternal Order of Police, to express concern about an important public health and safety issue. As the nation's largest law enforcement organization, our members, along with other emergency responders, have front-line responsibility for protecting the public from incidents involving hazardous materials, including those initiated by terrorist organizations.

The F.O.P. is strongly opposed to the dissemination of sensitive data over the Internet which can be useful to terrorists. Our most recent concerns with respect to this issue center on worst case scenario data that the Environmental Protection Agency (EPA) will collect from 66,000 facilities as part of its Risk Management Program under the Clean Air Act. This data describes in graphic detail the worst possible incident that could occur at a manufacturing facility, and includes the size of the surrounding area and the "public receptors," such as schools, hospitals and office buildings that would be impacted by a terrorist event. The F.O.P. agrees with the Federal Bureau of Investigation (FBI) and other law enforcement agencies that a national searchable database of worst-case scenario information would enable terrorists to choose targets with a precision heretofore unknown with potentially catastrophic consequences. If this national database were on the Internet, it would be a targeting tool accessible by terrorists from anywhere in the world.

The Clean Air Act Amendments of 1990 required EPA to disseminate worst case scenario data to the public and to local emergency responders, but did not specify how this data would be provided. Nevertheless, in January of 1998, EPA considered placing all of the Risk Management Program data, including the worst-case scenario information, on the Internet. Pressure from the intelligence community and Congress led EPA to agree not to do so.

In a recent Congressional hearing, EPA objected to any party placing the worst-case scenario data on the Internet. Now, despite EPA's objections, certain third party interest groups have indicated that they will use Federal information access procedures to obtain this national electronic worst-case scenario database from EPA and then place it on the Internet. We are very much alarmed by these irresponsible pronouncements, as should all American citizens.

The bill before the Subcommittee today, H.R. 1790, the "Chemical Safety Information and Site Security Act of 1999," addresses the need for appropriate controls and safeguards on the dissemination of sensitive worst-case scenario data. The legislation would make such data available to the public, but would not permit Federal, State or local governments from making the information available on the Internet or in an electronic form which would be easily collected and utilized by terrorists. We do believe, however, that such sensitive data, which could be exploited with catastrophic effect, needs to be subjected to greater control by law enforcement and agencies protecting responsible for national security.

Specifically, the legislation would permit the worst case scenario data to be available to Government Printing Office depository libraries, in addition to EPA and State and local government offices around the country. Federal depository libraries are not always Federal institutions and include many local public and university libraries, all of which are required by current law to make government publications, paper and electronic, available to the public. Depository libraries do not have the personnel or resources to be able to properly supervise persons accessing the data to ensure that it is not copied in any format. Library shelves and on-line systems are not secure, and are designed to make access to all information easily accessible for patrons—which is precisely the scenario we are trying to avoid. Their mission runs counter to the aims of the legislation, this Subcommittee, the EPA, the Department of Justice, and other law enforcement agencies.

The legislation also does not consider the online information system "GPO Access," which disseminates information directly to depository libraries via the Internet. The system is open to the public and has no safeguards in place to transmit information securely, and no system for the secure transmission of such data is currently under consideration by GPO.

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We also believe that the bill would be substantially improved by requiring the identification of all persons requesting access to the worst case scenario data. The bill in its current form does not require a written request for access—but "any" request. The F.O.P. strongly supports mandating the submission of a written request before access to information with this degree of sensitivity is granted.

In the same vein, the bill provides only that the Administrator "may collect data and maintain records that reflect the identity of persons seeking access to the worst case scenario data. Further, the bill qualifies this authority by stating that maintaining data of the requesters' identities should only be collected if "relevant and necessary to accomplish a legal purpose...by statute or executive order." While it can be assumed that such record keeping would be required under regulations setting a maximum number of requests from one individual, we believe that maintaining records is absolutely necessary to maintain control of this sensitive data and deter its potential misuse.

Law enforcement and national security agencies are correct in their determination that unrestricted access to worst case scenario data on chemical facilities, especially via the Internet, would allow terrorists to chose with great precision and accuracy targets for their attacks. The EPA is now in agreement with this assessment, and we should all be proud of the strong bipartisan cooperation with which Congress and the Administration have approached this issue.

We must strike the correct balance between public access to this information for legitimate purposes and the very real need to protect American citizens from the real threats of terrorism. Appropriate and necessary restriction of the worst case scenario information by law enforcement and/or national security authorities and record-keeping on requesters will greatly improve legislation that accurately identifies the problem, but does not provide a solution.

On behalf of our National President Gil Gallegos and the membership of the Fraternal Order of Police, I would like to applaud Congressman Bliley for his leadership on this issue. I sincerely hope that my testimony here today will improve H.R. 1790 to protect our nation's chemical facilities from terrorist attack without compromising the public's right to know.

I would like to thank you, Mr. Chairman and the members of this distinguished Subcommittee for the opportunity to share with you the views of the F.O.P. on this important matter. If you have questions, I would be pleased to answer them.

Mr. DEAL. Thank you, Sergeant.

Mr. Gablehouse.

STATEMENT OF TIMOTHY R. GABLEHOUSE

Mr. GABLEHOUSE. Mr. Chairman, and, members of the subcommittee, thank you very much for the opportunity to testify yet again before you on this matter.

I am testifying today as the chair of the LEPC for Jefferson County, Colorado, and as Representative DeGette indicated, I am also involved in some other activities in Colorado.

I am greatly concerned with the impact of this proposal on the normal, routine operations of local emergency planning committees. LEPC's are very much about communication. They are about local discussions on accident prevention and emergency management. Criminal sanctions for communication is an inherently chilling proposition.

We have also not talked about the Emergency Planning Community Right-to-Know Act. EPCRA contains independent provisions for public access to information, independent of FOIA. This proposal creates an absolute conflict between those provisions and the provisions that would apply here. That is a problem for an LEPC.

It is important to understand what LEPC's do, because LEPC's are no longer simply related to the very limited kinds of activities that happen under EPCRA. They do that certainly, but many function as the local emergency medical council. Many function as a disaster and emergency preparedness agency. Many function in

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wildfire management; they function in zoning and land use activities. They deal with cross-boundaries issues. I mean, frankly, I have recent conversations with Wyoming LEPC's about cross-boundary incidents. They communicate with the hazardous materials' teams and fire departments. Many of them are active in enforcement of fire code issues in their local communities. They do their own kinds of calculations on accident scenarios today, because accident scenarios are a relevant part of all those sorts of activities. You cannot do relevant emergency planning if you do not have a sense of what kind of scenario you are going to face. Otherwise, you are walking into a dark room—not advisable.

People belong to these LEPC's because they are interested in these issues. A large variety of folks belong. Press—radio, TV, print journalists belong to LEPC's. Members of industry belong to LEPC's. My LEPC is almost a third, industry representatives. Members of the general public, environmental activists, community activists—and, yes, even State and local officials belong to my LEPC.

Who attends our meetings? Darn near anybody shows up at meetings. We get Federal people at our meetings; we get members of the public walking in because they are lost; we get all sorts of folks. Okay?

If I look at this bill, I have to conclude that, perhaps, I can't hold public meetings. Are we going to preempt open meeting laws in States, as well as public records laws? Can I have a conversation about an RMP? Can I distribute copies within my LEPC to discuss? Not at all clear that I can, especially if members of the public are there—people who are not officially members of the committee; they just happen to be interested that day. That is a problem.

Many, I suspect, will resign from the LEPC, rather than take the risk of criminal sanctions for their activities. If, for example, it is clear that LEPC members are going to be State and local officials, industry representatives are going to have a very difficult time, then, going out and talking to affected communities about what is in their own company's risk management plan.

If State and local officials aren't represented by LEPC members, then, it is going to be very difficult for us to get any kind of meaningful information to conduct the kind of planning activities that we ought to be conducting.

I recognize that there is some reliance on the fact that supposedly what LEPC's do is a Federal task, in order to avoid first amendment issues with this bill. In fact, I think that reliance is well-misplaced. In fact, what LEPC's do is much, much broader than the activities defined by EPCRA. We engage in many, many activities that are outside the scope of what that statute suggests we should do.

Does that mean I can no longer go talk to the planning board or the school district about the risks associated with certain kinds of land use and zoning? I certainly trust not. But if so, then I am very likely in violation of these provisions, which I think is not appropriate.

I think I need to talk briefly about what is and is not in worst-case scenarios and offsite consequences. They are not recipes for causing incidents. There is no information here that would tell any-

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body how to do anything. Frankly, as the Denver Post article that was talked about earlier today suggests, you need not be a rocket scientist to understand that propane tanks explode, that large tanks containing flammable placards probably have stuff inside that will burn. This is not an inherently mysterious thing.

Information is very important to the public. People want to understand what risks they face.

We have a choice. Either we can have reliable information, we could have information that comes from a Government program in a data base accessible by people who are interested, or we could have rampant speculation and guesswork. I have faced rampant speculation and guesswork about accident scenarios. I have listened to people describe to planning and zoning commissions outrageous possible incidents that can occur from facilities.

Absent access to a reliable data base, I have no good way to refute that, other than calculating the worst-case scenario, myself—which I am capable of doing; I can do that under this rule. I can do the same thing a company does, but I am not at all certain that I can, then, publicly discuss that without being a criminal. That is a significant problem.

I want to close by saying that there is an obligation of the Clean Air Act called the "general duty clause." Risk management plan is only a small subset of how a company might demonstrate its compliance with the general duty clause. Companies are clearly required for their own facility's security to prevent accidents, to take the other steps and measures they need to, to keep accidents from happening. Okay?

I am terribly troubled by the concept that what we are doing here is, in fact, enhancing facility security. In fact, the bulk of facility security issues, accident prevention issues, emergency management issues are inherently local. They are a conversation between our HAZMAT team—which is, by the way, a 501(c)(3), so I don't know that I could discuss this stuff with them—and that facility, and the LEPC in that facility.

If I don't have access to information, if I am not certain what is going on in that facility, then you are going to need something else, much along the lines of what has been suggested by Representative Waxman. And I certainly don't believe that we ought to substitute command and control programs on that scale, of what is inherently a local matter.

Thank you. I would be happy to take questions.

[The prepared statement of Timothy R. Gablehouse follows:]

PREPARED STATEMENT OF TIMOTHY R. GABLEHOUSE, CHAIR, JEFFERSON COUNTY COLORADO LOCAL EMERGENCY PLANNING COMMITTEE AND MEMBER, COLORADO EMERGENCY PLANNING COMMISSION

Mr. Chairman and Members of the Subcommittee, I very much appreciate this opportunity to testify regarding the proposed bill, "The Chemical Safety Information and Site Security Act of 1999." My comments today will focus on the practical problems and difficulties a Bill such as this will create for the men and women who work and live in the communities of this nation and are engaged in emergency preparedness and response.

As with the Emergency Planning and Community Right-to-Know Act, the burden and responsibility of understanding and working with the federal emergency planning and response programs falls to the people at the local level. It is at this local level that Local Emergency Planning Committees operate. LEPC members include government employees, members of the public, representatives of facilities, consult-

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ants and even the press. I have been a member of the Jefferson County Committee since it was formed in 1987 and have been its chair for over four years.

As an LEPC chair I am required to discuss emergency planning and preparedness issues with a wide range of individuals and groups. These include elected officials, response agencies, emergency medical services groups, hospitals, schools, the business community and the public. The Emergency Planning and Community Right-to-Know Act requires me to disseminate emergency planning information to the public. The Colorado open records statute also makes all of the information possessed by the LEPC public information and accessible to the public.

Possible accident scenarios are an important part of the emergency planning and preparedness information that needs to be communicated. We need to anticipate and plan for the type of incident that can occur at a facility. Either through the work of the response agencies, our own calculations or by direct request to the facility, we obtain and communicate accident scenario information for preparedness purposes. While not necessarily identical to the off-site consequence information of the EPA Risk Management Planning Program, the information has the same intent and is quite similar.

When it comes to risk management plan information we already have members of the public asking for off-site consequence data. Some have even made efforts to calculate it themselves from other information already available. The off-site consequence data will be of great value for emergency planning and preparedness and it should be expected that responders, planners and public will be interested and want the information.

This proposed Bill will greatly complicate this process and will interfere with this communication. If passed, I am likely to be in violation and subject to its sanctions. At the very least this Bill will be in direct conflict with the requirements imposed on LEPCs by other statutes, federal and state. This is not a statement made out of some zealotry, but rather a statement of the problems I and other LEPC chairs and members will face from the conflicts of law this Bill creates.

Some examples are appropriate:

—It is very uncertain whether or not an LEPC chair or its members are State or local officers. They are typically not employees.

—We cannot tell whether or not "official uses" include our emergency planning and preparedness functions under the Emergency Planning and Community Right-to-Know Act nor whether or not it includes discussions with responders, the public and others.

—As an LEPC we will want to obtain all of the risk management plans for facilities in our area and all of the plans for facilities that have off-site consequences that impact our area, including those that cross state boundaries. This bill does not necessarily provide a mechanism where we will actually obtain the information.

—An LEPC will want to manage this information electronically. It is very unclear whether an LEPC can convert the information to electronic form and then disseminate the information to all the various groups that use the information.

—If I am in possession of risk management plan information, regardless of how it was obtained, I am apparently barred from disclosing the information, which would be a violation of the Emergency Planning and Community Right-to-Know Act as well as State statutes. It would appear that a violation potentially occurs even if the information is obtained directly from the facility or when our LEPC meets to discuss emergency preparedness matters.

—LEPCs in State border areas are apparently barred from talking to each other about cross-boundary emergencies. They are already working on these issues and this Bill could bring these efforts to a halt.

—We have no idea what "an electronic means of ranking stationary sources" means and so it would be very difficult to know if our electronic database would be lawful.

—If I as an LEPC chair calculated off-site consequence information from other data supplied by a company, or if the company supplies me the information directly, I am apparently barred from communicating this information to a community group or school as part of shelter-in-place or evacuation discussions. It is not possible to have a meaningful conversation with community groups about how to protect themselves if we do not discuss the accident scenarios they may face. We have these conversations now and they will undoubtedly continue. It is frankly unbelievable that Congress would attempt to restrict my "speech" on these topics especially if I generated the information.

—Apparently I have to follow EPA guidance on how to disseminate information or suffer sanctions under this Bill. There is no provision made in this Bill regarding how I will learn of this guidance, be able to comment on its development or otherwise determine when or how I might violate this guidance. It is very

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troubling that I might be subject to criminal sanctions for not following something as ephemeral as guidance. It is additionally troubling that this guidance will not even be subject to judicial review regarding fundamental issues relating to due process.

—Many LEPCs include as their members representatives of companies that are preparing risk management plans. Under this Bill those members appear to be subject to criminal sanctions for disclosing the information in their plans to the LEPC or the public.

It also is appropriate to point out to Congress that this sort of information is already being disclosed by LEPCs and facilities. In the *Denver Post* for this past Sunday there was a lengthy article on the risk management plan program as being implemented in Adams County, which is next to Jefferson County and runs across the Northern part of the Denver Metro area. In this article, the LEPC and facilities discuss worst case scenarios and report on a video they have made to depict these scenarios.

The intent of this project is reported by the LEPC Chair as "an attempt to educate the public and allay unwarranted fears." An industry spokesman is quoted as describing his facilities' worst case scenario as "If the leak happened on a day during a temperature inversion with light winds, a tear-shaped gas plume could spread as far a s15 miles." He went on to say "Some feel its silly to give a blueprint of a company's vulnerable points to potential terrorists and saboteurs, but any terrorist group worth its gunpowder probably already has that kind of knowledge."

Rather than promote this sort of communication, it appears that this Bill would not only prevent this exchange but probably criminalize it. This is not consistent with the position I heard industry representatives take before this Subcommittee. In fact, I believe that those representatives agreed that the LEPC was a key player in understanding and using risk management plan information.

It seems that the people proposing this Bill believe that there is no legitimate reason for members of the public to know about the accidents scenarios, prevention plans and emergency response procedures practiced in the rest of the country or even the next county or State. In my part of the country it is the public that is performing the function of accident preparedness and prevention. It is the public that are members of volunteer fire departments and local emergency planning committees. There is no valid distinction between members of the public at large and the people that perform these functions.

We learn from what we see others doing. It is precisely the information that we can obtain from other States and companies that helps us improve. We use this information to prepare better plans and to ask better questions of facilities about accident prevention techniques.

The fundamental truth, that is sometimes lost in this debate, is that facilities are responsible for their own security and accident prevention. The study I have conducted of this issue leads me to the conclusion that there is nothing in the 112r program and potential posting of information on the Internet that interferes with a facility's ability to perform these functions. The information submitted under the 112r program does not describe how to cause a chemical accident. The information does not describe the security systems that facilities have in place.

If this Bill is adopted it we will lose the impact of public awareness and involvement in the accident prevention arena. Instead of a program that relies on local people interacting with local facilities to provide an impetus to accident prevention, we will have a void. While my preference is local cooperation a viable program is dependant upon public access to information, the only other obvious approach is command and control. In that case it would be important to adopt something along the lines of the "Chemical Security Act of 1999" proposed by Representative Waxman.

EPA has already decided not to post the off-site consequence information on the Internet. I am prepared to live with that decision only because the full information will be available at the State and local level. This Bill destroys that potential. Off-site consequence information is desired and any vacuum will be filled. I believe that it is more dangerous to promote misinformation than it is to take the risk that someone will misuse accurate information. This Bill is unnecessary and inappropriate.

Mr. DEAL. Thank you.

Mr. Sloan.

STATEMENT OF THOMAS W. SLOAN

Mr. SLOAN. Thank you, Mr. Chairman.

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I am Tom Sloan, State librarian of Delaware. It is an honor to be here today, and I am here on behalf of the American Library Association.

My remarks relate to section 2, the distribution of EPA information to libraries that participate in the Federal Depository Library Program.

The issues addressed in this bill regarding public access to Government information are extremely important to libraries and the people and communities we serve. If enacted, H.R. 1790 would require that Federal depository libraries provide qualified or limited access to the EPA information on risk management plans and other EPA information that would be authorized to be publicly available.

In its current form, H.R. 1790 would cause serious problems for the Nation's depository libraries because this EPA material would not be available to library users, as required under USC title 44.

Since the establishment of the Federal Depository Library Program in the early-19th century, this unique program has evolved to become one of the most effective, efficient, and successful partnerships between the Federal Government and America's libraries. The depository program provided nearly 15 million copies of over 40,000 publications to more than 1,300 Federal depository libraries in fiscal year 1998. There is at least one Federal depository library in almost every congressional district. These libraries choose materials based upon the local needs of the people and the communities they serve. Fifty-three depository libraries are regional depositories and must accept all materials provided through the depository program.

Title 44 of the U.S. code provides for a wide array of Government publications to be provided to depository libraries for public access. Section 1902 requires that all Government publications of public interest and educational value be made available to depository libraries except those classified for national security or those required for official use only or for strictly administrative or operational purposes.

Participating libraries agree to provide free access to Federal Government information required through the depository programs. Libraries expend substantial local resources in processing, organizing, disseminating, and preserving Federal Government information. Library costs include providing highly trained staff, adequate space, necessary supplemental materials, costly equipment, and Internet connections. You can see that the infrastructure of our Nation's libraries and the specialized expertise and network of Federal depository libraries is a special national resource for the dissemination of Federal Government information.

These depository libraries are part of a partnership between the Federal Government and local institutions and communities that assure public access to U.S. Government information.

I will make several key points in my testimony regarding the provisions for public access to EPA information.

First, as librarians, we oppose any restriction on the access to or use of information by library users, nor would we agree to the collection or maintenance of records identifying individuals who access or use such information.

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Second, with many other groups, we have supported the public's right to chemical accident information. We believe that the American public is entitled to access chemical hazard information that will be collected and compiled by the EPA.

Third, restrictions on the use of Government information result in barriers between users and the information they need. H.R. 1790 mandates providing chemical hazard information in Federal depository libraries, but it does not allow it to be copied. No policy is going to stop the reality of copying occurring in 1,351 different libraries across this country.

H.R. 1790 authorizes the collection and maintenance of records that reflect the identity of individuals and persons seeking chemical hazard information. Such a procedure is likely in violation of many State statutes protecting the privacy and confidentiality of the records of library users. For example, in my State, the Delaware code protects the confidentiality of library records that identify users and the materials that they use. In Delaware, a court order is required for any exception to this provision. This is typical of many other States.

To make Government information available in depository libraries and yet not allow for copying or certain kinds of uses that would otherwise be legitimate is simply not possible to implement and enforce in 1,300 libraries across the country. Nor is it feasible to limit access only to paper copies when electronic formats may be available.

Depository libraries do not have the ability to control legitimate user behavior of Government information. For example, how does a library staff member answer the question of, is this official use or unofficial use of the information? Further, it is not appropriate to put depository librarians and other library employees at risk of liability and fines or jail time for perceived failure to comply with the requirements of this bill.

I am not aware in the 16 years that I have worked in Federal depository libraries of any previous item which has been provided through this program with such restrictions. The restrictions in this bill will set a very disturbing and dangerous precedent.

In the 1,352 Federal depository libraries located in nearly every congressional district, we provide your constituents with equitable, ready, and no-fee access to Federal Government information. The library community is committed to upholding the principles we share with you in providing public access to Government information.

We urge you to uphold the requirements of the Federal Depository Program which states that depository materials should not be compromised by the imposition of fees or by any other conditions or restrictions regarding their use.

We offer to share with you further information about the many practical problems depository libraries will face in implementing H.R. 1790.

In summary, as proposed, this bill places unreasonable restrictions on the use of library materials and may violate State statutes protecting library user information. Further, infractions of H.R. 1790 place depository librarians and other library employees at the risk of liability and fines or jail time.

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We stand ready to work with all stakeholders involved with the critical issues identified in H.R. 1790.

Thank you for this opportunity to speak.

[The prepared statement of Thomas W. Sloan follows:]

PREPARED STATEMENT OF THOMAS W. SLOAN, DIRECTOR, DELAWARE DIVISION OF LIBRARIES ON BEHALF OF THE AMERICAN LIBRARY ASSOCIATION

Good afternoon. I am Tom W. Sloan, Director of the Delaware State Library, and I am honored to appear before the House Subcommittee on Health and Environment today on behalf of the American Library Association. ALA is a nonprofit educational organization of 57,000 members, including librarians, library educators, information specialists, library trustees, and friends of libraries representing public, school, academic, state, and specialized libraries.

I have been invited to appear before you today to address provisions of H.R. 1790, the *Chemical Safety Information and Site Security Act of 1999*, that relate to Section 2 (c) and the distribution of offsite consequence analysis information to libraries that participate in the Federal Depository Library Program.

The issues addressed in this bill regarding public access to government information and the public's righttoknow are extremely important to libraries and the communities we serve. If enacted, H.R. 1790 would require that Federal depository libraries provide qualified or limitod access to the EPA information on risk management plans and other information that would be authorized to be publicly available. In its current form, H.R. 1790 would cause serious problems for the nation's depository libraries because this material, under U.S.C. Title 44, should be freely and fully available to all depository library users. This proposal will not work in the 1,351 Federal depository libraries across the country.

The principles of access to government information were first articulated and endorsed by our Nation's founders who believed them to be inherent to our democratic society and a necessary means of enabling our citizens, as taxpayers, to hold their government accountable. Since the establishment of the Federal Depository Library Program (FDLP) in the early 19th century, this unique program has evolved to become one of the most effective, efficient and successful partnerships between the Federal government and the American public.

The FDLP program provided nearly 15 million copies of over 40,000 publications to the 1351 libraries in the depository program in FY'98. There is at least one selective depository library in almost every congressional district that choose materials based upon their local needs and specialized collections. Fifty-three depository libraries are "regional" depositories and must accept ALL materials provided through the FDLP.

Title 44 of the U.S. Code provides for a wide array of government publications to be provided to depository libraries for public access. Section 1902 requires that all government publications of public interest and educational value, except those classified for national security, or those required for official use only or for strictly administrative or operational purposes, be made available to depository libraries.

Participating libraries agree to provide FREE access to the federal information they receive at no cost, but, they must provide the resources to receive and process the materials, catalog and organize the materials for effective use within their institutions by their clientele, ard then assist people in the process of identifying and locating the information they need.

You can see that the infrastructure of our nation's libraries, the specialized expertise of librarians, and the network of federal depository libraries, are a special national resource for the dissemination of Federal government information. These depository libraries are part of the partnership between the Federal government and local institutions and communities that assure public access to the information produced by the U.S. government.

I will make three key points in my testimony regarding the provisions for public access to risk management plans submitted to the Environment Protection Agency (EPA):

First, as information specialists and public access advocates, we believe that the American public is entitled to the information related to chemical hazards that will be collected and compiled by the EPA.

Second, as librarians, we would oppose any restrictions on the access to or use of information products by our patrons, nor would we agree to the collection or maintenance of records identifying individuals who accessed or used such information.

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Third, as librarians serving the public in Federal depository libraries, we know first-hand, on a daily basis, the importance and impact that government information has on the health and lives of all Americans, on the economic wellbeing of our nation and on the preservation of our democracy.

Regarding the first point, with many other groups, we have supported the public's right to know about chemical accident risks. We believe that the American public is entitled to the information related to chemical hazards collected and compiled by the EPA.

Regarding our second point, restrictions on the use of government information place service and other barriers between users and the information they need, and may inhibit users from going through special procedures to ask for them. Having to ask whether a potential user meets required qualifications in order to use certain government information would be in violation of most libraries' own policies. It may well be in violation of state statutes protecting the confidentiality of library records identifying users. Almost all states have adopted such statutes.

For instance, the Delaware Code protects the confidentiality of library records that identify users, and requires a court order for any exceptions to this provision. This is typical of many state statutes.

To make government information available in depository libraries, and yet not allow for copying or certain kinds of uses that would otherwise be legitimate is simply not possible. Nor it is feasible to limit access only to paper copies when electronic formats may be available. Depository libraries do not have the ability to control legitimate user behavior of government information they make publicly available in their collections, which raises the question of who defines and what is "official use"? And, the imposition of any type of fees violates the principles of "no-fee" public access.

Further, it is not appropriate to put depository librarians and other library employees at risk of liability and fines or jail time, for perceived failure to comply with the requirements of this bill.

I am not aware of any previous item that has come through the Federal depository library program with such restrictions. The restrictions in this bill would set a very disturbing and dangerous precedent are are unworkable at a very practical level.

Third, public access to government information is a basic right of the American public based on principles that Congress and the library community have long affirmed are essential to our democratic society. As stated by Thomas Jefferson in 1816, "*If we are to guard against ignorance and remain free, it is the responsibility of every American to be informed.*" Since the establishment of the Federal Depository Library Program (FDLP) in the early 19th century, this unique program has evolved to become one of the most effective, efficient and successful partnerships between the Federal government and the American public. Your constituents have equitable, ready, efficient and nofee access to Federal government information, created with their tax dollars, through the collections and services provided by their local depository libraries.

The success of the FDLP cannot be measured without acknowledging the substantial costs that participating depository libraries expend in order to provide your constituents access to federal government information in both print and electronic formats. These costs include providing highly trained staff, adequate space, necessary additional materials, costly equipment, and Internet connections. In addition, depository librarians are committed to upholding the principles of public access and the requirements of the Program that unequivocally state that access to depository materials should not be by compromised by the imposition of fees or any other conditions or restrictions about their use.

We stand ready to work with all stakeholders involved with this critical issue as debate on this moves forward. Thank you for the opportunity to be here today.

Mr. DEAL. Thank you.

Mr. Strader.

STATEMENT OF LOWELL P. STRADER

Mr STRADER. Mr. Chairman, members of the committee, I will try to make my remarks very brief and without being repetitive of what has already been said.

My name is Lowell Strader; I am an international representative of the PACE International Union, which stands for the Paper, Al-

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lied-Industrial, Chemical, and Energy Workers International Union.

Our union represents 320,000 workers who are employed nationwide in the paper, allied-industrial, chemical, pharmaceutical, oil refining, and nuclear industries.

Thank you very much for the opportunity to appear before you today.

Our organization is deeply concerned about the discussions and proposed legislation surrounding the issue of the Environmental Protection Agency not providing full disclosure of risk management plans which contain the worst-case scenarios.

In order to have effective, ongoing hazard reduction, we feel these plans must be fully disclosed in any form needed to encourage safer technologies, protect the public's right to know, and to overcome the complacency of the chemical industry. In the past, industry has not been required to produce any serious plan and timetable to reduce hazards. Yet, about 85 million people live within a 5-mile radius of a risk management plan facility.

The Clean Air Act requires the EPA to make this information available to the public. Members of our organization are the very first respondents to the site of a manufacturing accident that occurs in a facility where they work.

We feel there has not been enough effort placed on hazard reduction to allow us to readily accept limited disclosure about hazard materials that our members work with.

Year after year, large numbers of people are killed or injured in chemical accidents, not to mention the number of others that suffer long-term consequences by being exposed to the dangerous chemicals.

As recent as last Thursday at the Coastal Corporation Refinery in Corpus Cristi, Texas, an explosion hospitalized at least 10 people. The emergency management officials advised the local residents to shut their doors and windows and to remain inside.

The TV news reports aired interviews with members of the community who voiced concern that they were unable to find out what chemical agents they had been exposed to. At least one news agency indicated to the viewing public that these concerns would end in June when the law would require full disclosure of this type of information to the public. Little did they know or report that there was proposed legislation which would not require full disclosure.

We believe that there are many valid and important uses for risk management plan information by people who work and live and conduct business well beyond the immediate community where a facility is located. On the other hand, we do not believe that this disclosure would jeopardize or increase the risk of sabotage or terrorism. Industry has agreed that keeping this information off the Internet would not deter a professional terrorist.

Risk management plans containing worst-case scenarios do not include any information about how an industrial facility may be sabotaged. There is no technical data about how to cause a worst-case event. There is no tank locations listed. In addition, there is no plant security information; there is no classified information contained. Anyone can get readily available information regarding the largest and most dangerous facilities that store chemicals with-

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out using the Internet. In addition, keeping worst-case scenarios off the Internet offers no real protection to the communities. They can only be protected by industry using safer chemicals, reduce dangerous storage, widen the buffer zones, and provide full information.

Chemical accidents have no respect for geographic boundaries. We must have the freedom to communicate risk management plans across State lines to educate and help protect our members in the community.

Mr. Chairman, members of the committee, let us remind ourselves that it is not the knowledge that is harmful, rather it is the lack of knowledge that is deadly to the people that we should all be interested in protecting.

Thank you again for allowing me the opportunity to speak on behalf of the PACE International Union to explain our position on this very important issue.

Thank you.

[The prepared statement of Lowell P. Strader follows:]

PREPARED STATEMENT OF LOWELL PRESTON STRADER ON BEHALF OF THE PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION

Mr. Chairman, Members of the Committee, my name is Lowell Preston Strader. I am an International Representative of the Paper, Allied-Industrial, Chemical and Energy Workers International Union, better known as PACE. Our union represents 320,000 workers who are employed nationwide in the paper, allied-industrial, chemical, pharmaceutical, oil refining and nuclear industries. Thank you for the opportunity to appear before you today.

Our organization is deeply concerned about the discussions and proposed legislation surrounding the issue of the Environmental Protection Agency (EPA) not providing full disclosure of Risk Management Plans (RMPs). The question of full disclosure of Risk Management Plans is of vital importance to our organization, our members and the communities in which they live. In order to have effective, ongoing hazard reduction, we feel these plans must be fully disclosed to encourage safer technologies, protect the public's right to know and to overcome the complacency of the chemical industry. In the past, industry has not been required to produce any serious plan and timetable to reduce hazards.

The Clean Air Act requires the EPA to implement a program to assist in the prevention of chemical accidents. As a result, EPA developed the Risk Management Program Rule. This rule requires approximately 66,000 facilities that manage sufficient amounts of hazardous materials to develop a RMP and file it with the EPA. These facilities include chemical manufacturers, refineries, water treatment facilities, ammonia refrigeration, propane storage, and semi-conductor fabrication. About 85 million people live within a five-mile radius of a RMP facility.

The Clean Air Act also requires the EPA to make this information available to the public. Our organization became very concerned when we discovered that EPA had made the decision on November 6, 1998 to not allow full access to RMP information. Through joint correspondence with other groups to EPA Administrator Carol Browner, we have expressed our concern about EPA's unwillingness to provide full access to Risk Management Plans.

The members of our organization are the first respondents to the site of a manufacturing accident that occurs in the facility where they work. Their worksite may also be next door, across the street, or miles away from a site where an incident occurs, but still close enough to be affected. We feel there has not been enough effort placed on hazard reduction to allow us to readily accept limited disclosure about hazardous materials that our members work with and/or live near.

There is also the issue of manufacturing security. It is to our advantage, as an organization that represents workers in this arena, to be able to say to workers, their families and their communities that these facilities have nothing to hide. We would like nothing better than to be able to honestly tell workers that these facilities are working to reduce hazards and that their RMPs are available in any form necessary in order to prove that the facilities are really working towards true hazard reduction.

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Although the numbers may vary depending on the source of statistics and period of time examined, there is no doubt about the effects of chemical accidents on the human body. Year after year, large numbers of people are killed or injured, not to mention the number of others that suffer long-term consequences by being exposed to certain substances.

As of February 3, 1999, the Chemical Safety Board was reviewing or investigating accidents in Arizona, Arkansas, California, Florida, Georgia, Idaho, Iowa, three in Louisiana, two each in Maryland, Michigan, Missouri, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, and Washington State.

As recent as last Thursday an explosion at the Coastal Corporation refinery in Corpus Christi Texas hospitalized at least 10 people. Emergency management officials advised local residents to shut their doors and windows and remain indoors. TV news reports aired interviews with members of the community who voiced concern that they were unable to find out what chemical agents they had been exposed to. At least one news agency indicated to the viewing public that these concerns should end in June when the law would require that this type of information be made public. Little did they know or report that there was legislation proposed to not require full disclosure.

We believe that there are many valid and important uses for RMP information by people who live, work and conduct business well beyond the immediate community where a facility is located. RMP information can be useful in the following ways:

- Successful hazard reduction at one facility can be used to lower the hazards at similar facilities in different states;
- Verify reported information by comparing data submitted elsewhere;
- Hold government accountable for reducing hazards nationwide;
- Develop studies on chemical hazards;
- Develop effective accident prevention programs;
- Conduct effective education and training programs;
- Link other worker safety and health databases; and
- Determine which facilities might pose "Year 2000" risks.

We strongly believe that our members, their families and the communities they reside in will be made safer by these full disclosures or the RMPs. We do not believe that this disclosure would jeopardize or increase the risk of these facilities to sabotage or terrorism.

In earlier discussions with the EPA, the industry agreed that a "professional terrorist" would not be deterred by keeping this information off the Internet. (For earlier discussion, see www.epagov/swcrccpp/pubs/rmp-rpt.html and look under Section 2.B. "Location of RMP* Info (Internet Issues).

Risk Management Plans do not include any information about how an industrial facility may be sabotaged. There is no technical data about how to cause a "worst case" event and no tank locations are listed. In addition, there is no plant security information, and no classified information. Anyone can get readily available information regarding the largest and most dangerous facilities that store chemicals, without using the Internet. Also, keeping worst case scenarios off the Internet offers no real protection to communities. Communities can only be protected when companies use safer chemicals, reduce dangerous storage, widen buffer zones and provide full information.

Chemical accidents have no respect for geographic boundaries. We must have the freedom to communicate concerning chemical hazards, if we are to have real hazard education. Only with full disclosure of information and opportunities to act can facilities, employees and communities reduce chemical hazards.

In conclusion, I would like to reiterate the following points:

- Industry should and must create a serious quantifiable plan and timeline to reduce hazards; and
- Full disclosure of RMPs is the essential key to access the impact of hazard reduction programs and activities.

Mr. Chairman, Members of the Committee, let us remind ourselves that it is not the knowledge that is harmful, rather, it is the lack of knowledge that is deadly to the people that we all should be interested in protecting.

Thank you again for allowing me the opportunity to speak on behalf of the PACE International Union to explain our position to you today on this very important issue.

Mr. DEAL. Thank you.

Thanks to all the panel members.

We will start the questioning.

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Mr. Wheatley—or Chief Wheatley—as I understand it, you generally support the administration's bill, but believe there needs to be some fine-tuning in order to make certain as to what information is available to local emergency responders. Is that generally correct?

Mr. WHEATLEY. Generally, sir, that is correct.

Mr. DEAL. And that further refining, with regard to what is and is not going to be a criminal violation of any provisions under the bill?

Mr. WHEATLEY. Yes. The term "guidance" needs to be further defined to explicitly determine what is and what is not a criminal activity.

Mr. DEAL. Do you feel that reasonable definitions and restraints can be placed in this with some additional language in the bill?

Mr. WHEATLEY. We do.

Mr. DEAL. All right. So you generally support the concept of the legislation, I assume?

Mr. WHEATLEY. We do.

Mr. DEAL. Mr. Susman, you have expressed the same concern that we have heard the Justice Department and others express, with regard to the fact that if we don't do something by the June 21 deadline, as I understand it, that there exists the possibility of the worst-case scenario information being placed on the Internet by others than through the official channels. Do you have that very real concern?

Mr. SUSMAN. Yes.

Mr. Chairman, the Government agencies involved looked at this over quite some time to try to figure out whether it was possible under present administrative mechanisms to create obstacles to what they consider the worst-case disclosure scenario, which is electronic, universal availability of the offsite consequence data.

There is no way to prevent that under present law. The Clean Air Act, operating along with the Freedom of Information Act, will require disclosure in electronic format after the 21st, if Congress doesn't act.

Mr. DEAL. Did I understand you to further say you would propose that EPA go through a formal rulemaking process as a way for providing some further definitions in some of these areas that are unclear?

Mr. SUSMAN. Yes, sir. The bill is unclear as to when EPA should use rulemaking. It allows it to use guidance for everything and then says, "Oh, by the way; you can make rules, also." The main difference, of course, is that rulemaking requires advanced publication, public comment, and an opportunity for judicial review. And all of this can be compressed; there are procedures where this can be done quickly, procedures for interim final rules that would allow all of the due process and judicial review without undue delay.

Mr. DEAL. All right. Thank you.

Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

Mr. Gablehouse, welcome back for your quarterly trip to this committee on this issue.

We heard testimony during the February oversight hearing that some local emergency planning officials, State emergency planning

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officials, and even private citizens can construct worst-case scenarios utilizing information that is available to the public today like toxic release inventory information. And some have already posted that information on the Internet. In other words, worst-case scenario information can be created independent of the section 112 submissions. It is already out there; it is perfectly legal, apparently, to put it on the Internet. Correct?

Mr. GABLEHOUSE. Yes, sir; that is correct. It can be done. It is done.

Mr. BROWN. Why is it fair, then, to subject State and local officials to criminal sanctions for electronically distributing this specific worst-case scenario information given to them under section 112, but not anyone else who may construct and electronically distribute their own worst-case scenarios utilizing other information they might gather?

Mr. GABLEHOUSE. Well, it is certainly not fair, nor is it likely constitutional to do that. I think that, as a practical matter, we are trying to promote with the LEPC's, communication with communities on accident prevention and emergency response, be it shelter-in-place requirements or zoning and land use requirements. And I think it does not make sense to penalize the local folks who are trying do this work in communicating with the people at the local level who are interested.

Mr. BROWN. Mr. Strader, I appreciate your comments about potential accidents at chemical plants. And the Chemical Safety Board estimates that 600,000 chemical incidents occurred over a 10-year period between 1987 through 1996. Your testimony states that, "large numbers of people are killed or injured in chemical accidents."

Can you provide us with some idea of the numbers of workers who have been injured or who have died in work-related chemical accidents?

Mr STRADER. Off the top of my head, the last 3 months of 1998, we lost 20 people—20 workers—as a result of industrial chemical accidents.

And in the plant that I came out of, we lost several people, because our job was to produce TNT, nitroglycerine missile propellent, for the Government, and we lost several individuals there because of that.

Mr. BROWN. Can you tell us about that?

Mr STRADER. Well, at that time, this—the company that was in charge when I worked there, they would not work with the workers as far as sharing information.

Mr. BROWN. This was where and when?

Mr STRADER. This was at the Radford Army Ammunition Plant, in Radford, Virginia. I worked there for 24 years, from 1966 until 1990—from 1966 until 1990.

As a good example, a father of seven children who I worked with closely every day on the same shift, he was in a building which contained two tanks of nitroglycerine—each tank containing 2,500 pounds of nitroglycerine. I live with this incident; it is a very emotional incident with me, because that was my job. And 3 months prior to that, I did, through another part of the plant under the contract, and he took over my job. This building containing the

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tanks of nitroglycerine exploded. The tremendous amount of heat that is generated by that type of explosion destroyed the facility as well as the employee, and my good friend.

The scenario that was put out by the industry at that time was that a suspicion of sabotage and that he had climbed the fence and left the plant.

It took an act of the General Assembly of the State of Virginia to finally get this gentleman declared dead so that his family could get the insurance money and his benefits.

The employees had to watch for birds to pick up pieces of burnt flesh that looked like wood and tried to get the birds to turn that loose so it could be turned over to pathologists to determine that it was human.

I was a pallbearer at that funeral, and if anyone has been a pallbearer at a funeral and knows what a casket weighs with a body in it versus one with very small fragments, and especially when it is a friend, it imprints in your mind forever. I live with that guilt because he died instead of me of my working life, but I doubt if the industry has lost one night of sleep over it.

The bottom line is we now have another contractor in that plant who works very closely—shares all the information, whether it be worst-case scenario or what. We have developed training programs together with labor and the company and—knock on wood—we have been very successful in preventing accidents since that time.

Mr. BROWN. Could I ask for unanimous consent for an extra minute, Mr. Chairman?

Mr. DEAL. Yes.

Mr. BROWN. Thank you.

So this—you feel like you have the information you need to make this plant safer?

Mr STRADER. Under the law that will have—go in effect in June, we thought we would have.

Under this bill, we definitely feel we would be very restricted. And we feel like that even the companies that want to work with us will feel like they no longer can.

Mr. BROWN. If—you have 320,000 members of your union?

Mr STRADER. Yes, sir.

Mr. BROWN. Actually, that is all OCAW in a merger with you?

Mr STRADER. It was the former OCAW and the United Paperworkers——

Mr. BROWN. Right.

Mr STRADER. [continuing] which merged into PACE in January of this year.

Mr. BROWN. Have any of your union workers, to your knowledge, ever been injured in a terrorist attack on a chemical facility?

Mr STRADER. Not to my knowledge; no, sir. I know of none.

Mr. BROWN. Okay. Thank you.

Mr. DEAL. Mr. Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman.

I guess I am sort of having feelings of deja vu, seeing that in 1984, I took over the disaster preparedness for a county in San Diego which was small—group of 2.8 million.

But I guess I would have to refer to the law enforcement. One of the concerns that I was always confronted with by law enforce-

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ment was this issue of the right to know and the appropriate use of it.

Now we talk about terrorists as if they are somebody way out there, somebody coming in from a foreign country. But I would just ask the representative of law enforcement, you know, over the last few months, haven't we learned a little bit about the fact that the problem may not be something that is external that comes into our country, but may be misguided individuals who are in our community? A good example would be young men and women that may be using the Internet for access to this information to create havoc?

Mr. PFEIFER. Yes, sir; that is precisely one of our concerns.

We can probably never eliminate risk, but we can certainly try to minimize risk. And one of the ways we can do that is to keep this sensitive information restricted to those that have a need to know it and will apply it in a the proper way.

I don't believe it is the intent of the legislation to make it difficult for law enforcement, emergency medical services, or the fire service to train, to handle one of these situations when they come up. But, certainly, we need to understand that this information is very sensitive.

In the wrong hands, it can be very dangerous. And we used the term here "professional terrorist" today. I am not sure I know what a professional terrorist is, but I do know the harm and the damage that someone can do with information in an average intellect. And we have seen that happen before. Unfortunately, we will probably see it happen again. My concern is to limit the number of times it happens, and to enable us to deal with it when it does happen.

Mr. BILBRAY. Well, let me just tell you as a father of five children. You can talk all you want about professional terrorism, but I know the ability of young people to get information—the ability to acquire it and to apply it. And, frankly, I think there is a gross underestimating of just, you know, what our young people can do if they are misguided, especially when you have mental illness problems, substance abuse problems, and everything else. And we are not talking openly and frankly about that, and I think we ought to talk about it. We are not talking about professionals who have been trained outside of this country. We are talking about, you know, individuals who are living with us, right in our community.

I would—Orum, is it? Mr. Orum?

The administration has brought this legislation forward because they identified what they think is a problem. And I have worked with groups much like yours about trying to work out these balances.

First of all, do you mind if I ask you what your background is? Is it in environmental science?

Mr. ORUM. I have a degree in political science from the University of Oregon. I have worked for 10 years as coordinator of the Working Group on Community Right-to-Know. My full-time job is working with these right-to-know issues, and before that, I worked with Clean Water Action as their Chesapeake organizer for 3 years.

Mr. BILBRAY. So, are you trained in the law profession?

Mr. ORUM. No.

Mr. BILBRAY. Political science?

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Mr. ORUM. Yes.

Mr. BILBRAY. Okay.

I try to encourage people not to get into political science if they want to get into politics, but that is my personal hangup, because my brother was in political science, and he ended up being a lawyer which was even worse.

The issue—I guess the issue of right to know and reducing—how much of this do you see, working directly with source reduction? And how much do you see where you have basically people that make their money filing lawsuits under this—you know, different clauses, like this right to know?

How many groups that you know basically have most of their activity or most of their public—is in source reduction, as opposed to the litigation side?

Mr. ORUM. We work with about 1,500 different groups on and off and depending on their intensity of involvement with particular issues involving right-to-know around the country. And it is almost always involved in somehow addressing the actual problem at the site, as opposed to litigation.

I don't know of how this legislation would assist with litigation. I really don't work on that side.

Mr. BILBRAY. Well, that is to your credit.

Mr. Chairman, I yield back.

Mr. DEAL. Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Under the law, chemical companies are supposed to let the public know about their plans for an accident. And the accident could be an explosion at the facility that could happen, or it could be like we had in Bhopal, India—some chemicals getting into the air and going into the surrounding community and poisoning people.

These are accidents we don't want ever to have happen, and one of the ways of preventing it is to ask the chemical companies to come up with ideas on how to deal with this. If the public has access to this information, it is real pressure on the chemical companies to think through how to avoid this sort of thing from happening. That is the purpose of the law.

Now what we are being told is, if the public gets this information, terrorists will get the information. And I can see that argument, but, on the other hand, we had a hearing last week about .50 caliber sniper rifles. And these .50 caliber sniper rifles can accurately fire armor-piercing incendiary bullets several thousand feet, maybe as much as a mile away. And these weapons are easily obtainable by people as young as 18, if they can afford it. It is obtainable, and terrorists, presumably, can afford these things.

Now if you had a chemical facility—Mr. Susman, I guess I should address this to you—the location of chemical plants are not that hard to find out. And if there is a large propane fuel tank, you don't have to have a lot of special expertise to identify it. And if you are a terrorist, it is not going to take that much to realize that you can do a lot of damage, that some of these facilities are vulnerable. And this is all publicly available already.

So, my question to you is, shouldn't we be doing more to plan, to protect the sites that may be vulnerable to terrorism? And that can be done through looking at security at the site, screening of

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personnel, buffer zones to protect the surrounding community, what is called "hardening" these facilities. I mean these are important things to do in and of themselves.

We suggested that there be a task force convened to look at how to protect these sites. Now, I would presume you would think that would be a good idea?

We sent you a letter outlining our proposal. Did you——

Mr. SUSMAN. Yes, Congressman. And, in fact, section 3 of the legislation we are considering has a very comparable approach for law enforcement agencies to drive that process of looking at security issues.

Mr. WAXMAN. Well, the reason I would go to the stronger provision is that the bill has a discretionary study. I would mandate a task force.

But there is another point that I am trying to get to. And I am thinking through this issue—is why should we set up the most incredible roadblock for a lot of the public to get information that is important for them to have for fear of terrorism when what we ought to be addressing is how to protect these facilities that may be vulnerable to a terrorist attack?

I mean I wouldn't want the public not to know about a potential leak of poisonous gas from a chemical facility for fear that a terrorist would know about it. And, yet, here is the facility, and a terrorist would know here is a facility that might be vulnerable. They may have one of these .50 caliber sniper rifles that can send an incendiary bullet in there and blow the thing up.

So I am trying to balance out what we are accomplishing with this legislation.

What I know we are accomplishing with this legislation is we are going to make people who have the information possibly criminally liable if they let the public know about it, and that doesn't strike me as reasonable. I know with this legislation, we are going to do something that is completely unprecedented. We are going to have the information filed with the libraries, but if anybody at the library allows a citizen to copy the information in the library, they can be criminally liable. This is—this doesn't strike me to be at the heart of the first amendment, and also the purpose of the right-to-know laws, which is the public ought to be participating in information by getting information that will empower them to see whether these facilities are doing what is necessary to protect them.

Anybody want to respond to this?

Do we need to stop the public from knowing what you are doing at the chemical plants, Mr. Susman, to protect them, in order to stop terrorists, when terrorists have such an easy target? And because they know where the chemical plants are, shouldn't we be putting our focus on protecting those chemical facilities that may be vulnerable to terrorists without their ever having that knowledge of what is in a library?

Mr. SUSMAN. Two answers—the first and most direct one is that the public, locally, will have access under this legislation. They will be able to get copies of the plans. They will be able to look—they can get them from EPA or the State government. We are not—we may be limiting the ability of a national organization to go online

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and look at all of the plans, but we specifically contemplate and CMA supports local disclosure.

More importantly, Congressman, it seems to me that you are setting this up as a—we have a problem here and why look elsewhere? When we go to fight crime, just as when we go to fight pollution, we try to approach—and Congress has traditionally tried to approach the subject—by looking at a variety of ways of dealing with it. With crime, we don't say, "Well, let's raise penalties," and that is all we have to do. We also try to put more police on the street. We also try to go after gun issues. We also have disclosure laws like Megan's Law. We fight crimes by a variety of different approach.

We now have an issue here of chemical plant safety or the local population, two threats. One is disclosure through accidents——

Mr. WAXMAN. Yes, but it seems to me——

Mr. SUSMAN. [continuing] another is terrorism disclosure——

Mr. WAXMAN. [continuing] you are going——

Mr. SUSMAN. [continuing] we ought to address both of them.

Mr. WAXMAN. You want to address both of them, but I am worried that in addressing the issue of the community's right-to-know, you are going over too glibly the ability of the people in the community to really know this information.

Maybe Mr. Gablehouse could comment on that, because I want to get a balance——

Mr. SUSMAN. Sure.

Mr. WAXMAN. [continuing] of views on this, as we try to make up our minds.

Will the public really get this information that everybody seems to think they are entitled to?

Mr. GABLEHOUSE. I think it is rather doubtful, frankly. For example, it is not at all clear to me under this bill, that even the local emergency planning committee can obtain the information electronically. It is very difficult to manage if I don't it electronically. It, obviously, impairs communication of the information if I am not able to manage it in some sort of an electronic format.

I think there is grave doubt here as to whether or not I can share that information, in a photocopy, at a public meeting, with members of the public present, and as has been I think very poignantly testified to earlier. You know, there is people right at the scene that are going to be most immediately impacted. They are people that really do need to be a participant in the accident prevention. So I believe, Congressman, your point is very well taken.

Mr. WAXMAN. Is it the "official use" idea not being defined? Is that the problem?

Mr. GABLEHOUSE. Two issues that are problematic. One, whether or not an LEPC is, in fact, a State or local official——

Mr. WAXMAN. Yes.

Mr. GABLEHOUSE. or employee. And the second one is what constituents "official use?" So I think there are a couple of issues here that legally create difficulty for me.

Mr. WAXMAN. Mr. Chairman, my time is up, but I did want Mr. Susman to be able to respond, if you would permit——

Mr. DEAL. Without objection.

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Mr. WAXMAN. [continuing] because I did interrupt him to get another view.

Mr. SUSMAN. I must be reading a different bill, because it seems relatively clear that when the language says, "the Administrator may make available in electronic form offsite consequence analysis information to a State or local government officer." It is difficult to say I don't understand how States can get hold of electronic information.

And when the bill says, "that information may be paper form, may be given out under restrictions, but may be given for the State in which the office is located." I don't understand how one can say that that is not provided in the bill.

So, either we are looking at different—this one is numbered 1790. Either we are looking at different bills, or I believe that these are sort of hypotheticals that aren't included in the legislation.

Mr. WAXMAN. Well, I guess our fear is that the criminal penalties that would be imposed on local officials who give out information would keep them from ever giving anybody any information for fear that they are going to be hauled into court. That is a pretty chilling idea that you might be breaking the law and be prosecuted for giving information to the people we ultimately want to be sure they have the information.

So I think we ought to continue to look at this issue, because it is a troubling one. And maybe we are talking about the same thing, but maybe we are not.

Thank you, Mr. Chairman.

Mr. DEAL. I want to thank all the members of the panel for their time today. We apologize for the delays because of the votes. We do thank you for being patient and for your testimony. Thank you for being with us.

The committee is adjourned.

[Whereupon, at 6:08 p.m., the subcommittee was adjourned.]

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THE CHEMICAL SAFETY INFORMATION AND SITE SECURITY ACT OF 1999

WEDNESDAY, MAY 26, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2322, Rayburn House Office Building, Hon. Michael Bilirakis, (chairman) presiding.

Members present: Representatives Bilirakis, Burr, Bryant, Brown, Waxman, Pallone, Stupak, Green, DeGette, Barrett, Capps, and Hall.

Staff present: Joseph Stanko, majority counsel; Anthony Habib, legislative clerk, and Alison Berkes, minority counsel.

Mr. BILIRAKIS. The hearing will come to order.

Good afternoon. On behalf of Mr. Brown and myself, I would like welcome our panel of witnesses to today's hearing on H.R. 1790, the Chemical Safety Information and Site Security Act of 1999. Today's hearing continues the subcommittee's examination of H.R. 1790, and represents the second hearing that has been held on this legislation.

Previously the subcommittee held a joint hearing on February 10, with the Subcommittee on Oversight and Investigations, concerning Internet postings of worst-case scenarios. As I stated during our last hearing, it is my intent to thoroughly examine the legislation drafted by the administration; and yet to also meet the June 21 deadline of enactment of this very important bill. This will require a lot of hard work. But if we can work productively together—and I am emphasize "together"—the June 21 deadline presents an achievable goal. It may be a difficult goal; but it is far from an impossible goal, given the past history of this committee in meeting its obligations to the full House, and to the American people.

In this regard, efforts are already underway at the committee's staff level to clarify drafting issues, and to solicit changes from the administration concerning technical language of this bill. I am hopeful that today's hearing will provide further information and perspective concerning this legislation, and will be helpful to the process of bringing the bill to markup. I must reiterate: I have to be responsible, here. We are running out of time.

Despite best efforts following last week's hearing—and there have been many efforts for the past few days on the part of both the minority and the majority—we did not have one proposed

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change to H.R. 1790, which has been fully cleared by the administration. Even though the administration spent several months drafting the proposed measure; and even though many changes did not touch upon the issues that will be addressed by today's hearing, this situation clearly must change. The administration must give this measure the priority it deserves, and live up to the testimony it presented to this subcommittee just last week.

This being said, I look forward to receiving today's testimony, and acting quickly with regard to any additional changes to H.R. 1790 which may become necessary. Obviously the perspective of State and local government, as well as interested citizens, is of great importance to our consideration of H.R. 1790. Again, I want to thank our witnesses for being here on relatively short notice. I would now yield to Mr. Brown for an opening statement.

Mr. BROWN. Thank you very much, Mr. Chairman. I am pleased we are holding this additional hearing on the Chemical Safety Information and Site Security Act, H.R. 1790. I am pleased to be joined today by additional panelists to discuss the complicated issues raised by this legislation. I want to thank our witnesses, all of you, for coming on short notice; especially Ms. Southwell, who I know overcame many challenges to be here out of deep concern for the implications of this bill for local emergency planning committees and citizens.

In my statement at last week's hearing, I outlined several issues in H.R. 1790 that concerned many of us. Last week we lacked a State perspective on the implications of this bill, and the importance of community access to worst-case scenario information. This hearing will help fill that gap. In addition to testimony from the witnesses who are here, we have written testimony for the record from local officials, including Roxanne Qualls, Mayor of Cincinnati. Along with my opening statement, I request unanimous consent, Mr. Chairman, to submit a letter of testimony and two editorials for the record. The letter, dated May 26, is from the Mayor of Cincinnati, as I said. The letter is to the chairman and to me. The testimony is from John Steiner, Vice Chairman of the Nebraska State Emergency Response Commission. The two editorials are the May 20 and May 21 editorials from the Las Vegas Review Journal.

Mr. BILIRAKIS. Without objection.

[The information referred to follows:]

CITY OF CINCINNATI
OFFICE OF THE MAYOR
May 26, 1999

The Honorable MICHAEL BILIRAKIS, *Chairman*
The Honorable SHERROD BROWN, *Ranking Member*
Subcommittee on Health and Environment
Committee on Commerce
U.S. House of Representatives
Room 2125 Rayburn House Office Building
Washington, D.C. 20515-6115

DEAR CONGRESSMEN BILIRAKIS AND BROWN: Thank you for inviting me to speak before the committee today. I am sorry I am unable to attend the meeting to testify in person, but the hearing conflicts with the regularly scheduled meeting of the Cincinnati City Council. I appreciate the opportunity to submit written comments regarding H.R. 1790, the Chemical Safety Information and Site Security Act of 1999.

The City of Cincinnati estimates that about a dozen Cincinnati businesses maintain the threshold quantities of regulated substances and therefore must submit their Risk Management Plans (RMP) to the EPA next month.

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The City of Cincinnati has worked hard to lay the groundwork for the release of this information. The City realized early on that communities could be stunned by the descriptions of the worse case scenarios which could take place in their midst. We acted early to prepare our community for the release of these reports.

On February 5, 1997, I proposed that the City of Cincinnati establish a fund to provide technical assistance for communities to review the Risk Management Plans. To help citizens better understand the information in the RMPs, the City hosted four (4) workshops this April for interested community groups. These workshops were geared to help citizens understand the requirements of the EPA rule and to equip community leaders to review and ask informed questions about facilities' RMPs.

The City of Cincinnati is also researching the possibility of compiling all of the RMP for the tri-state area and making these available to the public at the local library.

The total impact of H.R. 1790 on these community education and involvement initiatives is unclear. Most of the details regarding the ability of local elected officials and staff members to communicate honestly with citizens would be developed as part of the EPA's guidance document, however, there is little doubt our public education and awareness efforts would be significantly hampered.

I have four major concerns about the proposed legislation I hope the committee will consider.

1. Cincinnati is part of a tri-state area comprised of Southwest Ohio, Northern Kentucky and Southeast Indiana. It seems that Section 2 (c)(4) of H.R. 1790 would restrict the ability of these areas to work together to address major concerns. It is unclear if the RMPs of facilities in Kentucky and Indiana would even be made available to environmental and safety personnel in the City of Cincinnati and vice versa. This could greatly reduce our ability to prepare for any potential accident and could increase the impact such a spill or leak might create.

2. Criminal penalties for the release of information place local staff and elected officials in a precarious position. It would be unprecedented for local elected officials to face the possibility of jail time based upon guidance from the EPA Administrator. Such a proposal also puts public employees such as librarians, police, firefighters and environmental management personnel at risk for criminal prosecution.

3. While the total impact of H.R. 1790 is unclear, the legislation in any form will hamper local community education and preparedness efforts. The EPA Administrator's guidance on these matters is to be developed without local government or public input and not subject to judicial review.

4. From a practical standpoint, restrictions on the release of information would create a bureaucratic nightmare and limit the effectiveness of local safety initiatives. It is unclear what information may be shared, with whom and in what formats. The term "official use" is nebulous and provides no true direction to guide local officials. Would local administrators need to check with an EPA database on public requests before they could release any information to constituents?

Let me conclude by stating that the Risk Management Plans do not create any additional risk. The risks already exist. Restricting the information on the plans will only hamper the ability of cities and residents to prepare for possible accidents and to work in partnership with facilities to create safer communities. The creation of a national database would enable Cincinnati to look at similar facilities and determine the "best practices" in the field. The City could then work with companies and communities to decrease safety risks locally.

Thank you once again for the opportunity to comment on this issue. I appreciate your time and consideration.

Sincerely,

ROXANNE QUALLS
Mayor

PREPARED STATEMENT OF JOHN J. STEINAUER, ENVIRONMENTAL ENGINEER II, AND AN EMERGENCY RESPONDER, LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT, LINCOLN, NEBRASKA

Mr. Chairman, and Members of the Subcommittee, my name is John Steinauer. I serve as an Environmental Engineer II and an Emergency Responder for the Lincoln-Lancaster County Health Department in Lincoln, Nebraska. I also serve as the vice-chairman of the Nebraska State Emergency Response Commission as a representative of local health. The LLCHD has long developed and implemented environmental health programs that seek to reduce chemical hazards in our community. In keeping with this record, LLCHD is currently seeking primary responsibility for

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implementing the Risk Management Program under Section 112(r) of the Clean Air Act (CAA) for Lancaster County from the US EPA and participates in the implementation of several sections of the Emergency Planning and Community Right-to-Know Act (EPCRA) as a member of the Local Emergency Planning Committee for Lancaster County. I also am assigned to the Department's biological-terrorism program development team and am responsible for the associated coordination with other Federal, State and local governments, and the private sector.

Coning from both a local perspective, as the coordinator of a local RMP program, and the state perspective, as the Vice Chairman of the State Emergency Planning Commission, and as a professional with thirteen years of experience in the emergency response and planning field, I am pleased to have this opportunity to discuss the Administration's proposed bill, "The Chemical Safety Information and Site Security Act of 1999," H.R. 1790. I strongly oppose this bill for several important reasons:

1. The language in the bill is sometimes contradictory and is vague in many of the important specifics regarding the use of electronic OCA information.
2. The need for local governments to track requests for OCA data using a national database would be unduly burdensome and costly.
3. This bill were it enacted would make it unlawful for LEPCs, created by Congress under EPCRA, 1986, to conduct the required planning and prevention efforts with the necessary and required community participation and would prevent zoning and community planning agencies from using the OCA data to determine zoning actions in any public forum.
4. The concern about the potential increase in hazard from terrorist use of OCA data is understandable but appears to be based on overly sensationalized security concerns that clearly do not justify a law that prevents good hazard planning in communities across the United States.

The Language of the Bill

The language in the bill is contradictory concerning the EPA administrator's ability to make electronic forms of the OCA data available to State and local governments. Section 2 (C)(2) states that:

"The Administrator may make available in an electronic form off-site consequence analysis information to a State or local government officer or employee only for official use."

Where Section 2(C)(4) states that:

"At the request of a State or local government officer acting in his or her official capacity, the Administrator may provide to such officer in paper form, only for official use, the off-site consequence analysis information submitted..."

The LLCHD is strongly opposed to any language that would limit local governments' ability to manage chemical hazard information in an electronic form. The value of the electronic information comes with it's incorporation into Geographic Information System (GIS) that allow for extensive hazard analysis, use for community response planning, use in zoning actions and community development planning, and use in coordinating an emergency response were the need to occur.

National Database of Requests for Information

The limits on what the Administrator may make available to the public under Section 2(C)(3) are overly ambiguous. The need to create a national database to track requests for OCA data as required by Section 2(C)(9) would impose a significant burden on local governments working with their communities in response planning. Section 2(C)(5) would require that the local government follow the same guidelines as an Officer of the United States. More importantly, there is no provision for use of the information in public forum meetings.

LEPC Planning Activities Made Unlawful

Following the yet to be determined guidelines that would allow only a limited number of copies of OCA data to be released to a single requestor in a paper form or in any other form only as authorized by the Administrator (Section 2(C)(7)), would make the chemical hazard planning activities of Local Emergency Planning Committees throughout the United States a crime punishable by a year in jail and a fine or both.

The Emergency Planning and Community Right-to-Know Act of 1986 created State Emergency Response Commissions in all 50 States, Indian Tribes (TERC), and other US territories. These SERCs in turn determine planning districts in their states and appoint LEPC members. EPCRA requires LEPC membership to include a variety of categories of people—emergency responders, public health professionals, the media, transportation and industry representatives, and public interest groups.

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In the State of Nebraska there are 93 Counties and 87 LEPCs, although the number of LEPCs is changing. LEPCs are mostly volunteer organizations.

The function of the LEPC is to develop community plans to respond to and prevent, where possible, releases of hazardous chemicals that can and do harm communities. The LEPC effort to plan for and prevent hazardous chemical releases is a highly public process; a process enabled by computerized hazard ranking of information such as OCA information. The ranking criteria enables the evaluation of risk, helps to assign priorities for resource application were an accident to occur, and allows for adequate training, equipment purchase, and exercise of emergency plans to ensure they function.

The LEPCs in Nebraska are beginning to function and make liaison with other local public agencies, boards, committees, and commissions. Imagine the usefulness of the OCA data to a planning and zoning commission attempting to identify areas for community growth, placement of hospitals, and other essential public services. Now imagine limiting or eliminating the ability for zoning commissions to use that data to plan community growth. To take the example a step further, think of explaining to a citizen who may have had family harmed in a chemical emergency why a day care center was built in a hazard zone identified in a Federal Program, but could not be considered because of the limitations in the use of the information that would result with passage of this bill.

Finally, the Clean Air Act Amendments of 1990, Section 112(r) requires that Stationary Sources covered by the act develop Risk Management Plans (RMP) and coordinate with the LEPCs and the coordination information be written into the community plan. The emergency response plan must be available to the public for review—no limitations. This bill contradicts the purpose and function of both EPCRA and Section 112(r) of the CAAA.

Terrorist Use of OCA Data

Moving on to consider the purpose behind this legislation, the concept of a increased terrorist threat. I accept the notion that the OCA data may provide a more convenient source of information for terrorists who may desire to cause a chemical hazard to a community. But I disagree that increased convenience offers a significant increase in risk.

Having served as an Officer in the United States Marine Corps and as a veteran of the Gulf war, I have had the opportunity to study terrorism to a degree sufficient that I find the argument that OCA data would enable a terrorist to identify potential targets difficult to accept. First, terrorists do not set off on random acts of violence, they plan and plan, and then plan some more. In most cases a terrorist knows as much about the target before attacking it, then the target knows about themselves. Second, all the information necessary to rank facilities by hazard on a national scale already is available on the Internet in many forms, in EPCRA Tier Two Chemical Inventories, and in libraries around the world in business references and periodicals. Third, the presumption that a terrorist is after the most casualties possible for their effort is not proven by history, or by recent events. Terrorists do not need a ranking of "worst cases" to choose the target that creates terror, they choose one that has symbolic importance and causes harm to few. The act of violence is the means, not the message. Terrorists are after political change via the use of violence. In short everything an international terrorist needs to identify and rank hazards for planning an attack is already present in the public domain, OCA data changes little.

Some would suggest it is not the international terrorist that is the concern, but a local domestic disturbance group and individual with an agenda. Anyone who lives in a community for any length of time can identify potential targets for terrorism, without the use of OCA data.

I believe that everyone would agree that reducing risk to the public from chemical released is the goal of this bill, as well as EPCRA and the RMP program. LEPCs in every city and county in the United States are working, more now than ever, to reduce the many known and demonstrated risks for chemical emergencies that are present in their communities. When releases do occur, they are a result of many causes rarely if ever associated with terrorism. What kind of message will passing this bill send to the thousands of volunteer LEPC members throughout the country? Are we saying that in their effort to plan for and prevent chemical emergencies in the public forum in which they must operate, that they are committing a crime! What kind of public policy sacrifices the known substantial improvements to public safety created by EPCRA and Section 112(r) of the CAAA over fears based on sensationalizing the terrorist threat to a level not proven or based on fact but on supposition and sensationalism.

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I would characterize the harm this bill would do to the effort to continue the development of emergency plans at the local level, as many times more risky than the very small increase in potential for harm done by the public availability of OCA data that may be obtained by terrorists. Especially when they already have access to all the information they need to plan a terrorist attack.

Summary

I disagree with the Department of Justice (DOJ) and the (EPA), that if enacted, the bill would preserve the important public health and safety benefits that public access to risk information has been shown to achieve, while protecting against a potential threat from terrorists. This bill neither protects the public from harm presented them by terrorists, nor preserves the important public availability of information. I believe that this bill would actually increase risk to communities by eliminating one of the most important motivations for industry to minimize or eliminate risks, that of public availability of risk information, active community-wide hazard planning, and the accountability for community concerns the storage and use of hazardous chemicals demands.

[Thursday, May 20, 1999—The Las Vegas Review-Journal]

CITY

AREA CHEMICAL COMPANIES OUTLINE WORST-CASE ACCIDENT POSSIBILITIES

By Keith Rogers

Declaring a new era for chemical companies and the public, officials for three plants in the Basic Management Inc. complex Wednesday night released their worst-case accident scenarios, including one that would send out a toxic chlorine cloud 18 miles across Las Vegas Valley.

The information, known as Risk Management Plans, will be submitted to the federal Environmental Protection Agency on June 21 as required by a 1990 amendment to the Clean Air Act.

Internet users who log on to the agency's Web site will not get to see the worst-case scenarios because the FBI, citing terrorism concerns, has recommended the data be withheld unless citizens request that copies be mailed to them. Congress is to decide whether the plans required for 66,000 facilities across the nation should be posted.

Mark Zusy of the state Environmental Protection Division's Chemical Accident Prevention Branch said people could request worst-case scenarios from his office.

About 300 people attended Wednesday's meeting at the Henderson Convention Center. The event was sponsored by the Chemical Manufacturers and Users of Southern Nevada, the trade group for the three BMI companies: Pioneer Chlor Alkali Co., Kerr-McGee Chemical Corp. and Titanium Metals Corp.

State and local emergency officials participated.

For Pioneer Chlor Alkali, the worst-case accident, based on failure of all safety systems and certain atmospheric conditions, would release 150 tons of toxic chlorine to the environment in 10 minutes. The chlorine would spread out at detectable levels as far as an 18-mile radius from the plant.

Emergency response officials said the Risk Management Plans were based on the midlevel guideline, the highest levels that could occur without causing serious injuries that were not life threatening.

Evacuation and alternative plans such as taking shelter in place are being coordinated among the emergency response agencies and the companies.

"In 1991, we had a major chlorine release and tried to evacuate people, but it cannot be done," said Henderson Fire Chief Joe Hill, explaining why the shelter-in-place program was developed.

The program tells schools and residents through rapid-dialed recorded phone messages to stay inside buildings and tape doors and vents to prevent poisoned air from entering.

The 1991 accident at Pioneer Chlor Alkali Co. involved a spill of 42 tons of liquid chlorine that evaporated on contact with the air. The accident sent more than 300 people to hospitals for treatment after being exposed to the gas, a powerful irritant to membranes of the eyes, nose and throat.

The accident was the nation's second worst involving chlorine, and based on the amount involved, delivered about one-fourth of the effects that would be expected from Pioneer's worst-case scenario.

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One Henderson resident, Tom Powers, said after the meeting he felt confident that progress on handling toxic chemicals safely had been made and that the meeting was a milestone.

"People are at last learning how to get a hold of this thing," he said. "They're doing a lot here. People aren't too bright, and they don't learn too fast, but we're getting there."Kerr-McGee listed five chemicals in its risk plans.

The company is a producer of manganese dioxide for alkaline batteries, boron trichloride for pharmaceuticals, and boron fibers for aircraft wings, golf clubs and fishing rods.

The worst-case scenarios for the chemicals range from a 14-ton release of hydrogen sulfide, which could affect an area nine miles from the plant, to a release of almost 3 tons of boron trichloride that would reach one-quarter of a mile from the plant.

The worst-case scenario for an accident at Titanium Metals involves the release of about 1 ton of chlorine that would affect areas about one mile from the plant.

More information about the companies, their products and safety systems can be accessed at the Web site www.cmusn.org.

[Friday, May 21, 1999—The Las Vegas Review-Journal]

EDITORIALS

WORST CASE

Under an amendment to the 1990 Clean Air Act, some 66,000 companies—including more than a dozen in Southern Nevada—must file reports with the federal government detailing their "worst-case" accident scenarios.

The regulation covers businesses that use and store certain chemicals, and is designed to ensure the companies and the communities in which they operate are prepared to handle various emergencies.

But the requirement also has the potential to provoke needless alarm, especially given the fact that the law's definition of "worst case scenario"—in true bureaucratic fashion—may not in some instances even be scientifically possible.

To that end, three Henderson companies deserve credit for co-sponsoring a meeting Wednesday night to put the legislation's requirements into perspective—and to signal their ongoing willingness to cooperate with local officials and residents in case of an emergency.

The companies—Titanium Metals Corp., Pioneer Chlor Alkali Co., and Kerr-McGee Chemical Corp.—are located in the BMI complex on a county island just north of downtown Henderson.

Make no mistake: These companies deal with hazardous chemicals that can pose a threat to the surrounding area—a liquid chlorine spill in 1991 at the Pioneer plant led to the evacuation of 10,000 Henderson residents. Those who live near such businesses deserve the opportunity to be well informed and should be aware of the proper procedures in the event of an emergency.

That's why Congress should decree that the reports be made available on the Internet to citizens who want to view them. The FBI has argued against such openness, saying the information would then be too readily available to terrorists. But repressing the reports would undermine the intent of the law. The FBI's concerns have little merit.

It's important to keep in mind, though, that the "worst-case scenario" requirement exists to force preparation for any contingency, no matter how remote: It doesn't reflect an assessment of an incident's probability.

Mr. BROWN. Mr. Chairman, I also request to include in the record a letter I expect to receive today, perhaps before the conclusion of the hearing, from Chris Jones, Director of the Ohio EPA—my State—again, which will be sent to me and to you.

Mr. BILIRAKIS. Without objection.

Mr. BROWN. I continue to be concerned with this legislation when the implications of it are so vast. All the stakeholders in this process share a common interest: risk reduction. Achieving this goal should not come at the expense of providing public access to this important information. Local communities must be prepared to respond in worst-case scenarios. I believe that we are hurting, not helping them if we withhold important information from them.

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They have a right to know about hazards in their own communities and their own workplaces.

Mr. Chairman, thank you again for this second hearing, and for the opportunity to explore these issues in this hearing today.

Mr. BILIRAKIS. I thank the gentleman. Mr. Hall, any opening statement?

Mr. HALL. Yes, Mr. Chairman. I also thank you for holding this second hearing on H.R. 1790. Mr. Chairman, I truly appreciate your efforts to include, also, as many interested parties as possible in these very important deliberations. Additionally, I would like to thank the administration for recognizing this problem, and for bringing us legislation that is going to address it.

I know—as we all do—that H.R. 1790 has some faults. I worry about any bill that has provisions that preempt State laws, as the National Association of Attorneys General and the National Conference of State Legislatures have pointed out in their letters to all of us regarding this legislation. Additionally, I don't want to see some librarian or some county official sitting in jail because they handed out the wrong piece of paper. However, I also worry about the implications of nonaction with respect to this situation.

We just cannot afford to sit idly by as the deadline approaches. We all know what is wrong with this bill. So let us fix the problem and send it to the President as quickly as we can. June 21 is not that far away.

I thank the panel of witnesses for their participation in this hearing. I look forward to hearing their testimony. I yield back the balance of my time.

Mr. BILIRAKIS. I thank the gentleman. Without objection, the opening statements of all members of the subcommittee are made a part of the record.

[Additional statements submitted for the record follows:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you, Mr. Chairman. As I noted last week, the Administration's proposal would address the national security concerns that would result if we do not act by June 21st to stop widespread posting of electronic worst-case scenario chemical release data.

The Administration's proposal is long over-due. I first raised this issue last September, when the June 21st deadline for filing the worst-case scenarios was nine months away. In October, EPA agreed that posting this information on the Internet raised national security concerns and that EPA would not put worst-case scenarios on its own website. EPA was silent about giving out the electronic database to third parties. In February, before this subcommittee, EPA said that it opposed third parties having the worst-case scenario information in electronic format. EPA also said that it would solve that problem. Finally, on May 7th, Administration proposed a solution, and I introduced that proposal by request.

The Administration's proposal seeks to prevent the widespread circulation of electronic worst-case scenarios data. EPA, FBI and DOJ all agree that would pose a threat to national security. The proposal also seeks to ensure that local officials have the risk information they need to plan and protect citizens, and that individuals have access to information concerning the risks associated with local chemical facilities. Like many legislative proposals, however, there are some issues that require fine tuning. For example, we must ensure that citizens who perform public duties, such volunteer firefighters and the LEPC members, have access to the data they need. The criminal liability provision of this bill need careful review. The Committee must examine potential restrictions on library materials. These flaws can and should be fixed, let us work together to address these issues.

Let me stress that no one here is advocating that we keep the worst-case scenario information locked up or away from those communities nearby chemical facilities.

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I, for one, certainly support making sure that these communities have access to all information about the risks associated with their facilities. But we also must ensure that the way this information is provided does not end up harming the very people that Congress intended to protect. While no plan is foolproof, we certainly shouldn't do anything to make it *easier* for those who want to harm our nation and our neighbors.

Because we *can* achieve both of these goals without sacrificing the other, I believe we *must* achieve both. The penalty for inaction is that, on June 21st, our national security will be compromised by the release of a national, electronic targeting tool available for use by terrorists from anywhere in the world.

I look forward to hearing from our panel today.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for holding this second hearing on H.R. 1790, the "Chemical Safety and Site Security Act of 1999."

At last week's hearing we received testimony from the Administration, the Chemical Manufacturers Association, PACE International labor union, the Fraternal Order of Police, the International Association of Fire Chiefs, and a representative from a local emergency planning committee.

While some witnesses were supportive of this legislation and others very skeptical, all witnesses agreed that the public has a right-to-know about the risk of chemical accidents in their communities.

Today we will hear the States' perspectives as well as that of the National Environmental Trust and the American Society of Newspaper Editors. I want to thank all of the witnesses for agreeing to appear on such short notice. Your testimony is helping to bring an important balance to this debate.

H.R. 1790 would address the risk of terrorism solely by limiting the public's right-to-know. This legislation ignores site security deficiencies at the nation's chemical facilities. This is a misguided approach and is counter to the testimony the Subcommittee has received and will receive today.

Last week, Ivan Fong of the Department of Justice testified that "site security measures are as important as information security measures in reducing terrorist risks." Thomas Susman testified on behalf of the Chemical Manufacturers Association that it is important to address both site security and information security.

Mr. Billings—through his testimony today—has brought a recent government publication to the attention of the Subcommittee that examines terrorism and chemical facilities. This publication by the Agency of Toxic Substances and Disease Registry notes that security at chemical plants ranges from fair to very poor. Amazingly, ATSDR notes that the security measures at abortion clinics is in general far superior to the security at chemical plants.

This issue of site security versus the public's right-to-know is well-illustrated by a recent hearing held by the Government Reform Committee minority. We recently examined the availability of long-range 50 caliber weapons. These sniper rifles are among the most destructive and powerful weapons legally available in the United States. These guns can fire specialized ammunition capable of piercing several inches of armor or exploding on impact. In a hearing on May 3, 1999, undercover investigators from the General Accounting Office (GAO) reported that they could readily purchase these weapons and the armor-piercing ammunition they use. Although the general public has little awareness of these weapons, they are widely available to anyone who is at least 18 years of age.

Chemical facilities are not secret facilities. A terrorist can easily locate a facility through the phonebook, tradeshows, or by just touring industrial cities. Large propane fuel tanks take no special expertise to identify and can be located at chemical facilities along with other fuel and chemical tanks.

A terrorist could use one of these high-powered weapons to explode a large propane tank at a chemical facility from up to a mile away. Such an explosion could cause a major chemical release.

And this legislation would do nothing about it. Limiting the public's right-to-know would have no impact on making a chemical facility less vulnerable once a terrorist has decided to attack. This legislation, however, could result in the community being less prepared for such an attack.

Mr. Chairman, I am trying to work on this issue in an inclusive manner. I have solicited the views of the Administration on this issue. I have written to the Chemical Manufacturer's Association to get their recommendations on how to address site

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security concerns. I requested that they respond by today, but unfortunately I have not yet received an answer to my letter.

I look forward to receiving comments on the best ways to address site security issues at chemical facilities, and moving legislation which will actually reduce hazards. I look forward to hearing from today's witnesses.

PREPARED STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Thank you, Mr. Chairman. I appreciate your cooperation in heeding the request of many Democrats on this subcommittee for a second hearing on this important topic. I am especially pleased to see environmental witnesses and a Representative from Nescaum, representing the northeast states.

Last week, I emphasized my concerns regarding potential attempts to roll back the public's right to know about chemical accident risks in communities nationwide, and highlighted numerous environmental and social action groups that echoed these concerns.

I noticed that last week no one opposed public access to information on chemical accident risks. The emphasis was, and should remain, in my opinion, on how to maintain public access to information, while ensuring site security also is maintained.

Several members of this subcommittee, myself included, and some of last week's witnesses referred to alternative means to achieve site security so as not to jeopardize the public's "right to know". I hope we will explore such alternatives further during the course of today's hearing.

I sincerely look forward to hearing from our witnesses and welcome their input as to how we should proceed to address this important issue. I also hope the witnesses will provide their opinions—both positive and negative—on H.R. 1790. Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you Mr. Chairman for scheduling this second hearing on H.R. 1790.

I believe your willingness to continue the hearings on this bill will help this subcommittee strike a fair balance between the public's right-to-know and public safety.

Since the EPA announced its intention to post worst-case scenarios on the internet as part of the risk management plans, most of the 66,000 effected facilities and almost every arm of law enforcement expressed concerns about the proposal.

They believed that providing this detailed information in such a public and easily accessible format could help terrorists and other criminals easily identify possible targets for attack.

While I understand these concerns I also believe citizens who live near these facilities have a right to know if they or their families could be placed in danger. Moreover, state and local governments need this information to develop appropriate rescue or evacuation plans.

While I believe H.R. 1790 is a well intentioned effort by the Committee's chairman to solve the problem, I also believe it fails to take into account its impact on volunteer fire fighters and emergency personnel, teachers, school principals, librarians and other non-state or local employees.

I hope today's witnesses will help give some guidance to the committee and help us craft a bill that meets the needs of everyone affected by potential worst-case-scenarios.

While well intentioned, this bill does some things like making state and local officials subject to criminal sanctions and preempting state Freedom of Information Act laws that are not acceptable in their current form.

Again, I thank you for scheduling this hearing.

Mr. BILIRAKIS. There are five votes coming up. I think it would be a good idea, though, if we could take at least one or two witnesses. Then we are going to have to break until we finish up with our votes.

Let us start off. Our witnesses are the Honorable Leon G. Billings, Member, Maryland House of Delegates; Ms. Donna J. Southwell, Ann Arbor City LEPC Member, Assistant Emergency

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Coordinator, Washtenaw County; Mr. Jason S. Grumet, Executive Director, NESCAUM, Boston Massachusetts; Ms. Kathy M. Kinsey, Assistant Attorney General for the State of Maryland; Mr. Thomas Natan, Research Director, National Environmental Trust, and Mr. Paul K. McMasters, First Amendment Ombudsman with the Freedom Forum.

Again, I welcome all of you here. Why don't we kick it off with Mr. Billings, and see how far we get? We are going to turn the clock to 5 minutes. Of course, your submitted statements are made part of the record. I would hope you would sort of complement those, if you would. Mr. Billings, please proceed.

STATEMENTS OF HON. LEON G. BILLINGS, MEMBER, MARYLAND HOUSE OF DELEGATES; JASON S. GRUMET, EXECUTIVE DIRECTOR, NESCAUM; DONNA J. SOUTHWELL, ANN ARBOR CITY LEPC MEMBER, ASSISTANT EMERGENCY COORDINATOR, WASHTENAW COUNTY LEPC, ENVIRONMENTAL HEALTH, EDUCATION AND OUTREACH MANAGER FOR WASHTENAW COUNTY, MICHIGAN; KATHY M. KINSEY, ASSISTANT ATTORNEY GENERAL, STATE OF MARYLAND; THOMAS NATAN, RESEARCH DIRECTOR, NATIONAL ENVIRONMENTAL TRUST; AND PAUL K. MCMASTERS, FIRST AMENDMENT OMBUDSMAN, FREEDOM FORUM, ON BEHALF OF THE AMERICAN SOCIETY OF NEWSPAPER EDITORS

Mr. BILLINGS. Thank you Mr. Chairman. In recognition of your time schedule and my other panelists, I will try to be relatively brief.

First, you already have for the record, the testimony of the National Conference of State Legislatures, which is an important piece of information. I hope you will pay attention to it. I am not testifying for them. I am testifying as an individual, elected member of the Maryland Legislature, and as a person with some familiarity with the preemption provisions of the Federal environmental laws.

The NCSL statement makes three points which are very important. First, States have an obligation to plan for and respond to chemical releases that occur within their borders. In order to fulfill these planning and response duties, States must have unimpeded access to OCA information. This bill would impede that access. Second, States should be consulted during the development of Federal policy governing public access to OCA information. This bill would preclude that consultation. Third, H.R. 1790 preempts State freedom of information laws in order to limit or control distribution to the public of OCA information. NCSL thinks that is an inappropriate policy. However, I would like to add to their testimony that the general rule in our environmental laws that the preemption occurs only in the case of interstate commerce, e.g., aircraft emission standards; or as a result of a Presidential finding that a preemptive action is in the paramount interest to the United States.

When this legislation was first called to my attention, I thought at the time it was odd. While I had not read the text of the bill, the news stories seem to suggest that we had a case of the law of unintended consequences. I have now read the legislation. Let me

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say first that the law this bill would seek to amend is just fine. It is this legislation which is, at least, ill-conceived and misdirected.

The bill suggests that State and local governments, and the public should not have complete and easily recoverable access to information on the potential threat to communities posed by inherently risky manufacturing activities. It appears that it would even preempt State laws and ordinances requiring similar information to be gathered. In other words, States could not have their own laws which gather the information and distribute it under their FOIA laws. It would bar the public which lives in the vicinity of those risky manufacturing activities from having the maximum available information on the risks posed.

This legislation gives a broad ground in discretion to the administrator of EPA to withhold chemical risk data from State and local agencies responsible for environmental emergency response. It gives the administrator broad discretion with respect to the form in which data is made available. It completely precludes the right of a community to know the location and risks posed by specific manufacturing facilities.

This legislation preempts the authority of States to conduct their emergency reaction responsibility with the full resources necessary to be effective, whether that information was generated under Federal or State law. This legislation also creates a new standard for preemption. In effect, by authorizing EPA to determine when there is substantial threat to public health and environment, it transfers the primacy for protection of public health and environment from the States, where it has been vested for the entire period of national environmental policy, to the EPA administrator. That is at page nine, sub-section F. Even Senator Muskie and his colleagues in the Democratic-controlled Congresses of the 1960's and 1970's did not tamper with State primacy. As a State legislator, I am more than a little surprised that this administration—this Congress—would now propose to do what decades of Democratic Congresses were unwilling to do.

Whenever there is legislation that preempts State laws, I am suspicious of its antecedent. In this case, there is more than a little reason for suspicion. Recently, the Agency for Toxic Substances and Disease Registry published an analysis of the steps to be taken in an emergency response situation at manufacturing facilities which use large quantities of hazardous materials. I would like to read to you from that ATSDR report. ATSDR is part of the Centers for Disease Control, not a part of EPA. It said, "Security at chemical plants ranges from fair to very poor."

Mr. BILIRAKIS. Well, finish up your point.

Mr. BILLINGS. I will finish this paragraph. "Most security gaps were the result of complacency and lack of awareness of the threat. Chemical plant security managers were very pessimistic about their ability to deter sabotage by employees. Yet, none of them had implemented simple background checks for key employees, such as chemical process operators." The quote goes on to point out more weaknesses.

The problem, to summarize, is ATSDR was at least as concerned about what might happen from inside these manufacturing facilities; or what might happen because of lack of security and training

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at these facilities, and not—I repeat—not about too much public information about these facilities. Thank you, Mr. Chairman.

[The prepared statement of Leon G. Billings follows:]

PREPARED STATEMENT OF HON. LEON G. BILLINGS, MEMBER, MARYLAND HOUSE OF DELEGATES

I appreciate the opportunity to appear before the subcommittee on Health and Environment, albeit on very short notice. I am testifying as an elected member of the Maryland State Legislature, a member of the Environmental Matters Committee of that Legislature, and as a person familiar with the history of federal laws governing environmental protection and the intergovernmental relationships which are characterized under those laws.

I am also submitting a copy of testimony of the National Conference of State Legislatures which makes three important points about this proposal. I would like to read those points:

"First, states have an obligation to plan for and respond to chemical releases that occur within their borders. In order to fulfill these planning and response duties, states must have unimpeded access to OCA information. As introduced, H.R. 1790 provides authority for the EPA Administrator to withhold OCA information from the states. Specifically, NCSL recommends amending Section 2(c)(2) and Section 2(f) to ensure that the proper state planning and response authorities have access to site-specific, nationwide OCA data in electronic form.

"Second, states should be consulted during development of federal policy governing public access to OCA information. As introduced, H.R. 1790 requires the EPA Administrator to consult with officials from other federal agencies during development of policy regarding availability of OCA information in both electronic and paper form. NCSL recommends amending Section 2(c)(7) and Section 2(d)(1) to require the EPA Administrator to also consult with state officials during development of such policy.

"Third, H.R. 1790 may preempt state freedom of information laws in order to limit or control distribution to the public of OCA information. It is NCSL policy that federal preemption of state law is not warranted, except when necessary or unavoidable in specific instances when a compelling national objective must be achieved. NCSL urges Congressand the Administration to clearly articulate the risks to national security posed by a nationwide, searchable OCA database on the Internet."

I hope that you will read the full NCSL statement carefully, as it represents a thoughtful perspective on this legislation and it restates the long-standing position of NCSL against federal preemption except in cases involving the security interests of the United States. I would add to their testimony that the general rule in our environmental laws is that preemption occurs only in a clear case of interstate commerce (aircraft emission standards) or as a result of a Presidential finding that a preemptive action is in the paramount interest of the United States.

When this legislation was called to my attention a few weeks ago, I thought, at the time, it was odd. While I had not read the text of the bill, the news stories seemed to suggest that we had a case of "the law of unintended consequences." I have now read the legislation. I have examined the antecedents to the legislation. And I have done some research on the subject which the legislation purports to address.

First, let me say that the law this bill would amend is just fine. It is this legislation which is, at least, ill-conceived and misdirected. The bill suggests that state and local governments and the public should not have complete and easily recoverable access to information on the potential threat to communities posed by inherently risky manufacturing activities. It appears it would even preempt state laws and local ordinances requiring similar information to be gathered. And it would bar the public which lives in the vicinity of those risky manufacturing activities from having the maximum available information on the risks posed.

This legislation gives a broad grant of discretion to the Administrator of EPA to withhold chemical risk data from state and local agencies responsible for environmental emergency response. It gives the Administrator broad discretion with respect to the form in which that data is made available. And it completely precludes the right of a community to know the location and risk posed by specific manufacturing facilities.

This legislation preempts the authority of states to conduct their emergency reaction responsibilities with the full resources necessary to be effective, whether information which guides that reaction originates federally or under state law. The fact that information available to the Administrator might not be transmitted to these

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agencies in electronic form means that emergency response teams on site would not be able to tap into data networks to get the critical information they need not only to protect the health of the community but to protect the health of the response team.

This legislation also creates a new standard for preemption. In effect, by authorizing EPA to determine when there is a substantial threat to public health and environment, it transfers primacy for protection of public health and the environment from the states, where it has been vested for the entire period of national environmental policy, to the EPA Administrator.

Mr. Chairman, even Senator Muskie and his colleagues in the Democratic controlled Congresses of 1969, '71 and '77 did not tamper with state primacy. As a legislator, I am more than a little surprised that a Republican Congress would now propose to do what decades of Democratic Congresses were unwilling to do.

Whenever there is legislation that preempts state laws, I am suspicious of its antecedent. In this case, there is reason for more than just a little suspicion.

Recently, the Agency of Toxic Substances and Disease Registry published an analysis of the steps to be taken in an emergency response situation at manufacturing facilities which use large quantities of hazardous materials. ATSDR was focusing on the question of potential terrorist activities at manufacturing facilities in the United States. Their concerns were not as the advocates of this legislation would have us believe: too much public information. Rather, they were concerned by the lack of prevention preparedness at these facilities—information about which would *not* be disclosed under this bill.

I would like to read to you what this government agency, part of the Center for Disease Control and not a part of EPA, had to say about security and safety at the nation's chemical plants:

> "...security at chemical plants ranged from fair to very poor. Most security gaps were the result of complacency and lack of awareness of the threat (i.e., that almost half of the targets were businesses and industries). Chemical plant security managers were very pessimistic about their ability to deter sabotage by employees, yet none of them had implemented simple background checks for key employees such as chemical process operators. None of the corporate security staff had been trained to identify combinations of common chemicals at their facilities that could be used as improvised explosives and incendiaries, although most were aware of individual chemicals that posed significant fire, explosion or poison hazards. Security around chemical transportation assets ranged from poor to non-existent..."

In other words, ATSDR was at least as concerned about what might happen from inside these manufacturing facilities or what might happen because of lack of security and training at these facilities.

The fact that CDC found these manufacturing facilities ill-prepared to prevent terrorism suggests the very real need to address that failure rather than to prevent state and local agencies from gathering, publishing or receiving information necessary to take action to protect public health and the environment. As a state legislator, I would urge the Committee to turn its attention to the adequacy of security and risk management planning at manufacturing facilities which use hazardous materials and let states and localities have the information they need to perform the tasks for which they are best suited.

Thank you.

Mr. BILIRAKIS. Thank you very much, Mr. Billings. I am sorry we had to cut you off. You have probably experienced this.

Mr. Grumet. "Gru-may," is that correct? I understand you are going to have to catch a flight. So, let us go ahead and start your testimony. If you don't go too very long, maybe we will be able to at least hear it out and then break for our vote. Thank you.

STATEMENT OF JASON S. GRUMET

Mr. GRUMET. Thank you, Mr. Chairman, and members of the committee. My name is Jason Grumet. I am the director of the Northeast States for Coordinated Air Use Management, or NESCAUM, which for over 32 years has been representing the air quality control programs in the six New England States, New York, and New Jersey. During those 32 years, I must tell you that we

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have spent approximately 48 hours immersed in the details of H.R. 1790. I would have to say at the outset on behalf of our States, I want to express our collective concern and regret that we have not had opportunity to engage beforehand; but more importantly our appreciation and recognition of the timeframes that you are working under.

What I would like to try to do in the next 5 minutes is first, share with you some introductory thoughts; then identify the context of our broader concerns; and then raise a few specific issues that I have been able to glean, not only from our eight Northeast States, but from several other States around the country that I have been able to contact in the last couple of days.

As was stated by the chairman, I think subsequently we all share the same goals. Obviously, we all share the goal to protect communities from not only catastrophic releases of chemicals, but also accidental releases. I think similarly, we all recognize that knowledge is power. We want to balance the community's access to that power—which is truly, I believe, in the best interests and aspirations of civic engagement—with the risks: that people—malicious people—might use that knowledge in harmful and unattended ways. I would suggest, too, that it is our responsibility to strike a balance that accepts those free-flowing ideals against legitimate—I would stress "legitimate"—national security interests.

In essence, the bulk of my comments reflect the Northeast States' concerns that H.R. 1790, as drafted, is overbroad in its intrusion into States' freedom of information laws, and also, in some of its punitive enforcement approaches. The right-to-know process, we believe, is fundamental not only to the environmental process, but also to the very principle and process of our entire democracy. We believe that it is a cornerstone of how we do good government in the Northeast and—I think it is fair to say—the Nation.

I would suggest to you that the principle of open access and the State laws that affect it are, in many ways, akin to a fundamental right in our system. I think the metaphor to how we deal with fundamental right is something that we have a lot of experience with in this country. We take them very seriously. It doesn't mean that we don't at times transgress upon them. But when we do seek to transgress upon what we deem to be an important and fundamental right, the courts apply a process which—while I am wholly cognizant of the difference between this and the judicial process—I think illustrates in many ways, and provides a good metaphor for the challenge that faces us. The courts apply a two-part test. First, they question if there is compelling government interest; and then they question if the approach is narrowly and precisely tailored to effectuate that compelling interest.

Here I would suggest that we, like the EPA, are going to defer to the Federal Bureau with regard to whether there is a compelling government interest of security. However, when we come to the question of whether of H.R. 1790 precisely and narrowly affects those interests, I think we are much less clear. To save time, I will not go through the host of points that are in my comments. I would associate the Northeast States with many of the comments that the NCSL just raised. I will just raise two key points to my members.

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The first question that I would ask you to deliberate on is: are all facilities equally vulnerable to these kinds of risks? Is this "one size fits all" obscuring of information, in fact, effectively and narrowly tailored to the problem that has been identified? Second, I would ask you——

Mr. BILIRAKIS. Mr. Grumet? Excuse me, sir. It might be a good place for us to break. We have something like 3, maybe 4 minutes at the most, to make a vote. So we really ought to run to do that. We can continue on this.

Mr. GRUMET. I'll just be right here when you get back.

Mr. BILIRAKIS. Forgive us, but we have 4 or 5 votes—I am not sure what it is—that will take at least a half hour, maybe a little longer. We will get back as soon as we can..

[Brief recess.]

Mr. BILIRAKIS. We will get started. The Chair apologizes to everybody. I wanted to make sure we had a bipartisan atmosphere up here.

Mr. Grumet, sorry we had to cut you off when we did. It is probably just as well that we did. We just barely made that vote. We will just go ahead and give you 3 minutes, or so. I am sure that you had less than that coming, but just do the best you can.

Mr. GRUMET. I will make my best. I will try to use my time constructively. In fact, I used the last half hour, I hope, constructively as well. I took the opportunity, with the assembled expertise in the room, to canvass other State representatives and members facing the June 21 deadline.

Mr. BILIRAKIS. You are doing a very good job with your presentation.

Mr. GRUMET. I must tell you that half hour has only amplified my basic concern, which is that H.R. 1790, as presently drafted, is overbroad in its intrusion into the State freedom of information laws.

As I was suggesting,while I am cognizant of the difference between judicial and legislative analysis, I do think that the metaphor of strict scrutiny which the courts look to when starting to potentially transgress upon such fundamental rights is illustrative here. Again, there is a two-part test that applies. One, is there a compelling State interest? Again with some discomfort, but a great deal deference, I would look the Federal Bureau to render that judgment and not to people who care about air quality. Therefore, we would accept their answer in the affirmative.

However, on the question of whether or not this proposal, this bill, is narrowly tailored to effectuate those compelling State interests; I think, again, we are much less clear. I will just go back to the two points that I would like to make in summary.

The first question: Are all facilities equally vulnerable to these risks; and therefore, is a "one size fits all" obscuring of this information, in fact, narrowly tailored to those compelling interests? I would suggest to you, intuitively, the answer has to be no. Of 66,000 facilities, there has to be some variety of both risk to the public, and some variety of risk to the kind of malicious activities about which we are concerned. So I would suggest that some other process—and I can't begin to tell you what that is, other than simply obscuring all that information—I would believe is preferable.

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Second, on the enforcement of this, the question of is threatening State employees and civil servants with incarceration an effective way to enforce these laws? Again, my members believe that that is probably a little overbroad.

In conclusion, we think the intrusion and preemption are overbroad. Finally, I would suggest that this is a very important lens into the risk that may be posed from 66,000 facilities. I would simply say that with whatever time we have that the Northeast States would like to join in a more deliberate discussion about how we might, in fact, develop some more robust techniques to not only obscure those risks, but actually mitigate them.

[The prepared statement of Jason S. Grumet follows:]

PREPARED STATEMENT OF JASON S. GRUMET, EXECUTIVE DIRECTOR, NORTHEAST STATES FOR COORDINATED AIR USE MANAGEMENT

Thank you Mr. Chairman. My name is Jason Grumet and I am the Executive Director of the Northeast States for Coordinated Air Use Management (NESCAUM). NESCAUM is an association of state air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. The Association provides technical assistance and policy guidance to the member states on regional air pollution issues of concern to the Northeast. We appreciate this opportunity to address the Subcommittee regarding the Chemical Safety Information and Site Security Act of 1999.

I believe that we all share the same substantive goal to protect communities from catastrophic and accidental chemical releases. Moreover, I hope that we all recognize that knowledge is power. Knowledge about the potential risks associated with chemical accidents empowers communities in the best spirit of civic engagement to reduce undesirable and unnecessary environmental hazards. As we have all witnessed, knowledge can also empower malicious people to visit harm on these same communities. The obvious challenge before Congress is to strike a responsible balance between the democratic ideals of free flowing information and the legitimate concerns regarding security and potential terrorist activity. The bulk of my comments reflect the Northeast States/ concern that H.R. 1790 is overly broad in its intrusion into state right to know laws.

The northeast states share a strong commitment and a legal obligation to practicing government "in the sunshine" and honoring the public's right-to-know about potential environmental hazards facing their communities. The requirements of Section 112(r) of the Clean Air Act represent an important mechanism for informing the public about the potential risk posed by the accidental release of toxic chemicals from facilities located in their communities and protecting them from such risk. State freedom of information acts (FOIA) and community right to know laws are fundamental to the process and principle of informed democracy. We are concerned about H.R. 1790's intent to preempt state FOIA law. These laws serve a critical role by providing state regulators and other interested parties access to the detailed information needed to craft effective regulations. They also enable private citizens to make informed choices about where they want to live and discover the truth about the risk from and the causes of environmental hazards. In essence, the principle of open access is akin to a "fundamental right" in the design and implementation of our nation's environmental policies. While I am wholly cognizant of the different obligations and burdens of the legislative and judicial processes, I believe that identifying freedom of information as a fundamental right provides a useful metaphor for our challenge here today.

Our judicial system often grapples with similar situations where the ideals of free speech create security concerns. When faced with a conflict between fundamental rights and state interests, courts traditionally apply a two-step analysis. First, courts examine whether government has a compelling interest to justify the proposed transgression and second they probe whether the means employed to achieve the statute's goal are narrowly and precisely drawn. While I am not suggesting that this committee apply "strict scrutiny" review to this or any other legislative proposal, I do believe that this analytical process, loosely applied, illustrates our concerns about H.R. 1790. In this instance, the national security interests identified in H.R. 1790 surely present a compelling government interest. However, the northeast states are far less certain that this bill is effectively and narrowly tailored to achieve these important ends. Two issues immediately leap to mind. First, do all

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covered facilities present similar security risks? Hence, is the "one size fits all" restriction of information proposed in H.R. 1790 effectively and narrowly tailored? Second, is threatening civil servants and librarians with financial ruin and incarceration an effective and narrowly tailored means of increasing site security? Only threugh dialogue with a broader range of affected parties, including state officials, can we ensure that this bill achieves its goal in a manner that respects important public disclosure rights and obligations.

Moreover, we are troubled by the proposed process whereby EPA would issue guidance establishing procedures and methods for making off-site consequences information available to the public without the opportunity for public comment or judicial review. Further, the prospect of emergency personnel responding to an accident without the appropriate information about the types and amounts of chemicals involved will unnecessarily jeopardize their health and that of the larger community. It is unfair and dangerous to put state and local officials in the position of trying to determine what information can and cannot be legally shared with emergency personnel in the heat of a crisis.

There are literally thousands of incidents each year in the Northeast involving the accidental release of dangerous chemicals into the environment. Section 112 (r) is intended to protect the public from accidental releases at those large stationary facilities that present the greatest potential risk to the public. The off-site consequence analysis information contained in the Risk Management Plans (RMPs) addressed by this bill represent the last line of defense for communities in the event of an accident. Consequently, the public has a vital interest and a right to review and comment on these plans.

It is our expectation that the requirement to develop and disclose the off-site consequences analysis information through the RMPs will encourage some companies to voluntarily develop strategies to reduce the risk in worst-case zones. The fact that their neighbors and employees will be made aware of the potential risk from exposure to chemicals accidentally released by a facility provides a powerful incentive for companies to minimize such risk. The experience with the Toxic Release Inventory program is an example of how reporting requirements can promote significant voluntary reductions on the part of facilities concerned with their corporate image.

In conclusion, the northeast state environmental agencies are concerned that the preemption of state laws and punitive enforcement measures in H.R. 1790 are over broad. In addition, the magnitude of the security concerns noted by supporters of H.R. 1790 appear to beg a deeper issue. We urge Congress to act to diminish the risks of catastrophic chemical releases in substance and not simply seek to obscure the public's awareness of these risks. What are needed are better plans to protect vulnerable sites from terrorist activities. We urge Congress to take the time necessary to develop a viable approach that provides greater security at chemical facilities without trampling on the fundamental protection afforded by public right-to-know laws.

Mr. BILIRAKIS. Thank you very much, sir.

Ms. Southwell, when you are ready.

STATEMENT OF DONNA J. SOUTHWELL

Ms. SOUTHWELL. I don't know if I will ever be ready. This is a little nerve-wracking for me. I really want to thank you, Mr. Chairman, and members of the committee, for an opportunity to talk about this bill.

I am from Washtenaw County in Michigan, which is east about 43 miles from the city of Detroit—to just give you some context. I have been staffed to the local emergency planning committee. I sit on the city of Ann Arbor LEPC, as well as act as Assistant Emergency Coordinator for the Washtenaw County LEPC.

Part of my job functions are twofold. One is to do the planning for the entire County of Washtenaw for local emergency planning contingency plans for chemical spills. The second part is that part of my job also entails coordinating response to these spills. So I know how valuable those plans are. I know that having those plans in place; having that full information; and being able to work with

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all of the entities that are involved in cleaning up and protecting the environment and the population are critical to that process.

Washtenaw County and Ann Arbor are among the top 20, nationally, for the production of hazardous wastes. We had a program that was originally the Community Right to Know Program in our county, established in 1986, before SARA. That kept facility information, including maps, plans, and chemical inventories on over 1,400 facilities and made that information available to the public.

LEPCs are required under Federal law to have a variety of elected officials, community professionals, environmentalists, and facility coordinators on their board. These are the people who craft those plans in conjunction with the community and the facilities, and make these available. The primary responsibility is to develop emergency plans and to make that available to the public. In developing the plans, they evaluate all available resources. That is part of Federal language under SARA.

There are two pieces of the nine "shalls" that this legislation will really impact negatively. They are No. 5, which says "Describe methods for determining the occurrence of a release and the probable affected area and population;" and No. 7, which says we have to have an evacuation plan. That means that in planning for a potential, or possible, chemical spill we have to consider all of the people, all of the places, and all of the things that is going to affect. We exercise those plans. So if it does happen, we are prepared to meet that emergency as best that we can.

Section C of this bill effectively prevents the LEPC from fully developing required plans, and from meeting the No. 5 "shall" mandated under EPCRA. They are mandated to create effective evacuation plans, but it is very difficult to do this without full information. LEPCs are mandated to annually publish notice in local papers that these plans are available. That is the community right-to-know effect that is so important. If this bill passes, it seems like it puts LEPCs in direct conflict with federally enacted regulation; so that whatever they do when they attempt to do their job, they are going to be in conflict with some kind of law.

Out of great concern for public health and safety, the community right-to-know provisions help increase the public knowledge and access to information that gives them information to make informed choices and decisions about taking steps to keep their families safe. We have a pamphlet that we put together called, "Safety in Chemical Emergencies." We passed this out to over 100,000 people. These people were not alarmed. Instead, they were grateful for the information, and took steps that, I think, can help them in their everyday life.

Under the planning that we have done under SARA title III, we have witnessed a 20 percent reduction in the number of sites for which to plan for in our community; and a 50 percent reduction in the number of spills that we have responded to. A lot of the reason for that is because these facilities have either switched to alternative chemicals that aren't as toxic; they have reduced their inventory so that they aren't keeping as much on hand; or there is new technology available to them.

I contend that if there is a security concern about some of the facilities that will be reporting under the Clean Air Act amend-

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ments, this is the same sort of alternative that is available to them. I contend that if there is security problems, perhaps it is up to the facility to begin to think about increasing their security measures, instead of putting the burden onto the local emergency planning committees that are a federally unfunded mandate required to do planning, and required to uphold community safety.

I'll stop——

Mr. BILIRAKIS. Well, finish your point.

Ms. SOUTHWELL. The fact is that we are, again, a federally unfunded mandate. This is all volunteer people. We have a hard enough time getting people, on the busy days, to commit to being volunteers; to commit to helping us with these plans; and to commit to this community activism. To have to say them, "Well, your reward for this job well done is that your possibility of going to jail and being fined is very real;" I feel like terribly constrains the community's attempt to be safe.

Thank you very much for this opportunity.

[The prepared statement of Donna A. Southwell follows:]

PREPARED STATEMENT OF DONNA J. SOUTHWELL, ASSISTANT EMERGENCY COORDINATOR FOR THE WASHTENAW COUNTY, MICHIGAN, LEPC, MEMBER OF THE CITY OF ANN ARBOR LEPC, AND WASHTENAW COUNTY ENVIRONMENTAL HEALTH EDUCATION AND OUTREACH MANAGER AND FUNCTIONING ENVIRONMENTAL RESPONSE MANAGER

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to share with you concerns regarding the proposed "Chemical Safety Information and Site Security Act". It is my intention to address the significant difficulties within this proposed legislation as they relate to federally mandated responsibilities of Local Emergency Planning Committees (LEPCs), Public Health and Safety, the inherent right of citizens in this country to have access to information and finally, the protection of Local Government staff and volunteers.

Background

Washtenaw County is located in the southeastern portion of the Lower Peninsula of Michigan. approximately 43 miles west of downtown Detroit. The County is home to the City of Ann Arbor, the University of Michigan, Eastern Michigan University and several other institutions of higher learning. Ann Arbor is ranked fourth nationally as the best place to live. There are approximately 300,000 people living in our county with 213,000 homes.

The Washtenaw County-Ann Arbor Metropolitan area is also in the top 20% nationally for the production of hazardous waste. The Washtenaw County Pollution Prevention Program, established in 1986, inspects and keeps records on more than 1500 facilities with an aggregate amount of 5 gallons or more of chemicals on site. This includes facility information and chemical inventories. EPA has recognized this venture as a model program for other communities. This records include all SARA Title III facilities whose contingency plans, by unanimous vote of the federally mandated LEPC, are being prepared to be made available on the County web site. The County LEPC is comprised of volunteer representatives from business and industry, local government, educational facilities, hospitals, fire departments, Emergency Management and local residents.

Public health and safety, the environment, quality of life and the right to information allowing for knowledgeable choices are of profound concern to area residents. This legislation as written would have great impact on these concerns.

Federally Mandated Responsibilities of LEPCs

LEPCs must include at a minimum, elected state and local officials, police, fire, civil defense, public health professionals, environmental, hospital, and transportation officials as well as representatives of facilities subject to the emergency planning requirements, community groups, and the media. The LEPC is required to complete a number of tasks, including establishing rules, giving public notice of its activities, and establishing procedures for handling public requests for information; however, the LEPC's *primary responsibility is to develop an emergency plan and to make that plan available to the public.* In developing this plan, the LEPC evaluates

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all available resources for preparing for and responding to a potential chemical accident. The plan must include the following nine components, also known as "the Nine 'SHALLS' of Sara Title III":

1. Identify facilities and transportation routes of extremely hazardous substances;
2. Describe emergency response procedures, on-site and off-site;
3. Designate a community coordinator and facility coordinator(s) to implement the plan;
4. Outline emergency notification procedures;
5. Describe methods for determining the occurrence of a release and the probable affected area and population;
6. Describe community and industry emergency equipment and facilities and identify the persons responsible for them;
7. Outline evacuation plans;
8. Describe a training program for emergency response personnel (including schedules);
9. Present methods and schedules for exercising emergency response plans.

Section "C" of this Bill effectively prevents the LEPC from fully developing required plans and from meeting the number five "SHALL" mandated under the Emergency Planning and Community Right-to-Know Act, (EPCRA). It is the fundamental nature of EPCRA to use all existing information in constructing plans that identify the likely plume dispersion path of each chemical in the worst case scenario and to identify potentially affected regions and populations. Special care is taken to identify sensitive populations such as schools, hospitals and nursing homes. In number seven "SHALL", LEPCs are mandated to create effective evacuation plans, difficult to accomplish without full information. LEPCs are mandated to publish, annually, notice in the local paper of the availability of these plans. In addition, LEPCS are further mandated to make these plans available to the public. (Reference Appendices A, B and C). If this Bill is passed, it puts LEPCs in direct conflict with federally enacted regulations no matter which approach they consider in the attempt to complete their mandated functions.

Public Health and Safety

From the United States Environmental Protection Agency Office of Solid Waste and Emergency Response (5101) EPA 550-F-93-002 dated January 1993; SARA Title III Factsheet: THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (my Appendix B), I quote "—This law builds upon EPA's Chemical Emergency Preparedness Program (CEPP) and numerous State and local programs aimed at helping communities to better meet their responsibilities in regard to potential chemical emergencies. The Community Right-to-Know provisions will help increase the public's knowledge and access to information on the presence of hazardous chemicals in their communities and releases of these chemicals into the environment. States and communities, working with facilities, will be better able to improve chemical safety and protect public health and the environment—" Without full access to information, information restricted by this proposed Bill, again, the LEPCs will not be able to accomplish the tasks for which they were created. Since SARA Title III, in our community alone, we have witnessed a 20% reduction in the number of sites for which we must plan and the reduction by 50% in the number of releases recorded in our community. When sites were queried as to why they declared themselves no longer eligible under SARA, many answered that they had reduced the amount of chemicals on site, had found less toxic alternatives or technology had allowed them to change their processes. One Facility Coordinator introduced himself to me at our annual LEPC-sponsored Facility Coordinator's Conference, shook my hand and said: "We really don't like you, but you make us better!" Chemical Safety has improved and public health and the environment is better protected. I can only try to imagine you or me struggling to explain to our constituency that we can no longer do our job to protect their health and their environment because of the restrictions and penalties of HR 1790.

The Inherent Right of Citizens in This Country to Have Access To Information

EPCRA is the acronym for "Emergency Planning and *Community Right-To-Know Act*". Perhaps it is time to review the history of accident, death and destruction that preceded the creation and implementation of EPCRA:

§Texas City 1947—552 Fatalities, 300 injuries
§Donora PA 1948—20 Fatalities, 5,000 exposures
§Flixborough UK 1974—28 fatalities
§Bhopal India 1984—3K fatalities, 200K exposures
§Pasadena TX 1989—28 fatalities, 130 injuries

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In addition, let us not forget the lessons learned in the community that turned the page for Right-to-Know: Love Canal. Even then, the all too familiar cry of special interest that ill tidings would be befall them if the community knew what was really going on behind the closed doors and obscured buildings at their facility. Love Canal was the part of the origin of SARA Title III that was enacted over twelve years ago. Nobody blew up their buildings. The sky did not fall, and now days, visionary business and industry are working in partnership with governments and residents to improve quality of life in the hometown and global communities that they live in and work in together. If disclosure has opened the door to improved community trust and relationships, then what door will this proposed Bill and the return to evasiveness open?

Protection of Local Government Staff and Volunteers

SARA Title III is a federally unfunded mandate. Membership in the LEPC is voluntary. All planning tasks are completed by the volunteers who include representatives from the regulated businesses and industries. Under Sec. C, part 8, of this Bill, if members of the LEPC as either employees or volunteers to Local government do the task required of them, they can be arrested, fined and jailed for up to one year. It is difficult enough in these hectic and busy days to enlist and retain volunteers. One can only imagine the joy of recruitment and retention of LEPC membership if criminal prosecution becomes the reward for a job well done!

Again, SARA Title III is a federally unfunded mandate. Under Sec. B, of this Bill, LEPCs could be levied fees to retrieve information that they are required to have access to under the CAA 1990.

Between the proverbial rock and hard place is exactly where this Bill will land the LEPCs. No one wins from that position.

Mr. BILIRAKIS. Thank you, Ms. Southwell. Thank you so much for that perspective.

Ms. Kinsey.

STATEMENT OF KATHY M. KINSEY

Ms. KINSEY. Thank you, Mr. Chairman. Mr. Chairman, and members of the committee, my name is Kathy Kinsey. I am an Assistant Attorney General with the Maryland Attorney General's Office. I am here testifying today on behalf of both the Maryland Attorney General, and the National Association of Attorneys General, on H.R. 1790.

I want to state at the outset that our office only recently learned of this legislation. We have not had time to either assess its full impact on Maryland law, nor to discuss the impact of this bill with State and local agencies, such as the LEPCs, that would be affected by the provisions of this bill. I would like to emphasize that, as chief law enforcement officers of the State, attorneys general do understand the importance of protecting the public from acts of terrorism, and the legitimate concerns that law enforcement officials have in this regard. We recognize that there is a delicate balance here that has to be struck between law enforcement concerns and the right of the public to access this very important information.

Having said that, however, we do have some concerns about this bill. I will be brief. First, we share Delegate Billings' concerns about the preemption aspects of this bill. To our knowledge, no State government officials or attorneys general were consulted about the preemption issues before this legislation was introduced. They have not had an opportunity to assess the impact on our public information acts. This is an area which is of particular concern in Maryland and other States, where there is a very strong interest in favor of public disclosure—full public disclosure.

Second, a knowing violation of this legislation if it is enacted in its current form is going to subject a State official, possibly even

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an attorney general, to criminal sanctions under title 18 of the United States Code. We are obviously very concerned about subjecting State and local officials to criminal sanctions without any prior consultations with those officials about the impact of this law. Third, it is unclear, as drafted, exactly what the law is that would be violated. Section D of this bill indicates that the EPA will issue guidance setting forth the procedures and methods by which this offsite consequence analysis may be made public. This guidance would not be judicially reviewable; and therefore, not subject to the ordinary processes that are normally accorded in the course of development of regulations. There is no meaningful mechanism here for States or other interested parties, including citizens, to participate in the guidance development process. Presumably, of course, it would be a knowing violation of the guidance that would, in effect, subject State officials to criminal sanctions. This is unprecedented, as far as we know. We are unaware of any other provision of law providing criminal penalties for violation of an agency guidance that does not carry the full force of law.

We also note in section D that the guidance is to be developed in consultation only with Federal agencies. Assuming for the moment that this guidance would be legally enforceable, we think the guidance that would trump State law should not be developed without the active involvement of the States, particularly where a violation of that guidance would subject the State and local officials to criminal sanctions.

Finally, another problem with the bill as we see it as that it is very unclear how State officials, even Federal officials, will respond to requests for this information during this interim period between the time that the law is enacted and the time that any guidance would eventually be developed by EPA.

Thank you very much. I appreciate very much the opportunity to be here today. I am happy to answer any questions you have.

[The prepared statement of Kathy M. Kinsey follows:]

PREPARED STATEMENT OF KATHY M. KINSEY, ASSISTANT ATTORNEY GENERAL, STATE OF MARYLAND

Mr. Chairman and members of the Subcommittee, my name is Kathy Kinsey, and I am an Assistant Attorney General for the State of Maryland. I am here on behalf of Attorney General Joe Curran, a member of the National Association of Attorneys General, to discuss H.R. 1790, the "Chemical Information and Site Security Act of 1999."

My office has only recently learned of this legislation, and we have not had time to analyze it fully or assess its full impact on Maryland law; however, we do have some general concerns that we would ask the Subcommittee to consider. First, let me state that as the chief law enforcement officers of the states, attorneys general understand the importance of protecting the public from acts of terrorism, and the legitimate concerns of law enforcement in this regard. We recognize that a delicate balance must be struck between law enforcement concerns and the right of the public to information about potential threats to their communities and environment. We would be happy to work with the Congress, the U.S. Department of Justice, the U.S. Environmental Protection Agency, and other concerned parties to address these matters.

We have several points to make about the legislation before this Subcommittee:

1. As proposed, this legislation would preempt state law. To our knowledge, no affected state officials, including Governors, Attorneys General or legislators were consulted prior to the introduction of this legislation, and therefore had no opportunity to assess its impact on State public records laws. We believe that States should be adequately consulted by Congress and the Administration before federal laws are enacted that would preempt state law.

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2. A knowing violation of this legislation, if enacted in its current form, would subject a State official, including perhaps, an Attorney General, to criminal sanction under Title 18 of the United States Code. We are quite concerned about federal laws subjecting State and local officials to criminal sanction without prior consultation with such officials.

3. It is unclear as drafted what "law" would be violated. Section (d) of this bill indicates that the Administrator of the Environmental Protection Agency shall issue "guidance" setting forth the procedures and methods by which off-site consequence analysis information may be made public. This guidance would not be judicially reviewable, and therefore not subject to the public processes normally accorded development of regulation. Thus, there would be no meaningful mechanism for States or other interested parties, including citizens, to participate in the guidance development process.

4. Prosumably, it is a knowing violation of this guidance that would subject State officials to criminal sanctions. We are unaware of any other provision of law providing criminal penalties for violation of an agency pronouncement that does not carry the force of law.

5. We also note, in Section (d), that this guidance is to be developed in consultation with appropriate Federal agencies. Assuming for the moment that any "guidance" issued by the Federal government is legally enforceable, a guidance that would trump state law should not be developed without the active involvement of the States, particularly where a violation of the guidance might subject a state or local official to jail time.

6. Finally, it is unclear how State officials should respond to requests for OCA information during the interim period between enactment of this legislation and issuance of the guidance by EPA.

I appreciate the opportunity to appear before this Subcommittee, and would be happy to respond to any questions you may have.

Mr. BILIRAKIS. Thank you very much, Ms. Kinsey.

Mr. Natan.

STATEMENT OF THOMAS NATAN

Mr. NATAN. Thank you, Mr. Chairman. My name is Tom Natan. I am Research Director of the National Environmental Trust. Thank you for the opportunity to testify as a member of the environmental community.

I am a chemical engineer. Over the past 5 years I have visited scores of industrial facilities looking at ways in which they can operate more efficiently and safely; as well as helping to interpret their environmental data for residents of the surrounding communities.

No doubt the committee is aware of EPA's Toxic Release Inventory Program, "TRI," which as been credited by both environmentalists and industry alike for generating a climate that has resulted in dramatic decreases in toxic chemical emissions, without the traditional constraints and costs of command and control regulation. An extremely important lesson that we can glean from TRI is that public access to toxic chemical release information alone can generate enormous risk reduction benefits. For many workers at industrial facilities, TRI is their first opportunity to learn about chemicals used on the job—another unexpected benefit of access to information. All of these benefits can be enhanced further through public access to all of the Clean Air Act 112(r) data.

I say enhanced because, unfortunately, accidents still occur. Fourteen members of this subcommittee represent States that have had at least one chemical accident in the past twenty months. Thirteen workers were killed; another ninety-five were injured in those accidents. These figures don't include any of the impacts on the surrounding communities.

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The Chemical Manufacturers Association has raised concerns about the availability of Off-Site Consequence Analysis data on the Internet. Even in the absence of Internet access to that data, there are many ways in which the chemical industry, EPA, and the intelligence community must work, both separately and together, to reduce hazards and potential risks. However, the Chemical Safety Information and Site Security Act of 1999 virtually eliminates the public participation that would create the necessary accountability of industry and government to accomplish real hazard reduction. Instead of offering a mechanism for hazard reduction that would otherwise have occurred through public participation, this bill offers corporate secrecy and criminal penalties.

Under the bill, a concerned citizen would first have to obtain paper copies of submissions for all facilities within 25 miles of home, work, or school, because no mechanism exists for prioritizing risks under the proposed legislation. This assumes that the requestor does not live in a location in which there are enough facilities to exceed whatever maximum the administrator sets for requests. It also assumes that there are no facilities outside that 25-mile radius that would impact his or her home. Once the facilities of greatest concern have been determined, naturally citizens will want to see how those facilities compare to others in the same industry in other parts of the country, and contact those facilities for information on how they may have reduced their hazards. They will have to go to a GPO depository library and manually examine thousands of paper submissions to cull some facilities that qualify, and then would not be allowed to photocopy that information.

The restriction will not apply just to concerned citizens. For example, there are the workers at the facilities, for whom these worst-case scenario data may be the best vehicle to learn about risks and hazards on the job, and what other companies are doing to reduce those hazards; emergency responders who want to know if a particular plant meets the industry standards for safety; educators who will want to teach students about best practices; and investors who will want to track the performance of all the facilities of a particular company. None of these concerned parties will be able to undertake necessary and legitimate comparison and analyses under this bill easily, if at all.

The bill goes further and prohibits dissemination of critical reports. As part of their accountability to the public, EPA and State governments need to take an active role in providing comparative analyses of data from facilities within particular industries to determine "best in class" practices as they currently exist in order to drive real hazard reduction. Under the bill as proposed, these analyses would not be available to the public. Furthermore, State or Federal Government employees who make such analyses available could be jailed and/or fined for doing so.

The administration's bill provides a template to restrict public access to any of the data currently collected by EPA. What is to prevent a future restriction of TRI data for the ten most flammable substances on the TRI list; or the ten that are judged to be the most acutely toxic; or access to permit application data. Worst of all is the possibility that such future restrictions could pass with this bill under the guise of a technical amendment.

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Just how is it that the agenda went from restricting Internet access to Off-Site Consequence Analysis only, to a severe restriction on data dissemination by other means? To my knowledge, the review of worst-case scenario data by the FBI is the first time that agency reviewed chemical accident data reported by facilities to determine the potential threat that onsite use of toxic chemicals poses to local communities. The most significant finding made by the FBI is that the use of chemicals poses the risk.

In light of these findings, it is important to emphasize that by not providing an alternative to public awareness and pressure, the bill fails to provide an impetus for hazard reduction. In return for ignoring these benefits, any bill restricting access to OCA data needs to provide that benefit, perhaps by instructing the Department of Justice, along with EPA, to identify the potential for hazard reduction, and therefore, the vulnerability of citizens to chemical exposures, whether accidental or otherwise. This should be accomplished first by using less-toxic chemicals; and where that is impractical, safer transportation, storage, and handling and increases in site security and buffer zones.

Thank you Mr. Chairman.

[The prepared statement of Thomas Natan follows:]

PREPARED STATEMENT OF THOMAS NATAN, RESEARCH DIRECTOR, NATIONAL ENVIRONMENTAL TRUST

Mr. Chairman and Members of the Committee, my name is Thomas Natan, and I am the Research Director of the National Environmental Trust, a non-partisan, non-profit public interest organization that educates the public on environmental issues. I thank you for the opportunity to testify as a member of the environmental community concerning the EPA's Risk Management Plan Program under section 112(r) of the Clean Air Act. I am a chemical engineer, and have visited scores of industrial facilities, examining ways in which they can operate more efficiently and safely, as well as helping to interpret their environmental data for residents of surrounding communities.

As the Committee is aware, in 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act. A principal feature of this legislation was the Toxics Release Inventory Program, or TRI. TRI has been credited by both environmentalists and industry alike for generating a climate that has resulted in dramatic decreases in toxic chemical emissions without the traditional constraints and costs of a command-and-control regulatory framework. A principal result of the public right-to-know program has been an incentive for enhanced environmental stewardship without the burdens of the command-and-control regulatory system.

The enduring lesson of public access to information regarding toxic chemical risks facing communities is that real risk reduction can occur without the imposition of new and significant costs to our manufacturing sector. Another extremely important lesson that we can glean from the TRI process is that public access to toxic chemical release information alone can generate enormous risk reduction benefits. Also, for many workers at industrial facilities, TRI is their first opportunity to learn about chemicals used on the job—another unexpected benefit of complete access to information. All of these benefits can be enhanced further through public access to all of the 112(r) data.

As the Committee is also aware, the Chemical Manufacturers Association has raised concerns about the availability of Off-Site Consequence Analysis, or OCA, data from 112(r) on the Internet. Even in the absence of Internet access to data, there are many ways in which the chemical industry, EPA, and the intelligence community, must work, both separately and together, to reduce hazards and potential risks to the American public from use of toxic chemicals at industrial facilities. However, the Chemical Safety Information and Site Security Act of 1999 virtually eliminates the public participation that would create the necessary accountability of industry and government to accomplish real hazard reduction. Instead of offering a mechanism for hazard reduction that would otherwise have occurred through public participation, the Administration offers corporate secrecy and criminal penalties.

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Under this bill, a concerned citizen would first have to obtain paper copies of submissions for all facilities within 25 miles of home, work, or school, because no mechanism exists for prioritizing risks under the proposed legislation. This assumes that the requester does not live in a location in which there are enough industrial facilities to exceed whatever maximum the Administrator has set for requests. It also assumes that there are no facilities outside the 25-mile radius that would impact his or her home. Once the facilities of greatest concern have been determined, naturally, citizens will want to see how those facilities compare to others in the same industry in other parts of the country, and contact other facilities for information on how they reduced hazards. They will have to go to a GPO depository library and manually examine thousands of paper submissions to cull some facilities that qualify, and then would not be allowed to photocopy the information. The other alternative would be to wait until EPA had made an OCA electronic database available, although this database would not have facility identification information, so citizens would not be able to contact representatives of those other facilities without another trip to the library, again without a way of searching for what they need other than looking at every submission.

And the restrictions won't apply just to concerned local citizens. For example, there are workers at the facilities, for whom Worst Case Scenario data may be the best vehicle to learn about risks and hazards on the job, and what other companies are doing to reduce those hazards; emergency responders, who will want to know if a particular plant meets the industry standard for safety; educators, who will want to teach students about best practices; and investors, who want to track the performance of all the facilities of a particular company. None of these concerned parties will be able to undertake necessary and legitimate comparisons and analyses under this bill.

The bill goes further and prohibits dissemination of critical reports. As part of their accountability to the public, EPA and state governments need to take an active role in providing comparative analyses of data from facilities within particular industries, to determine "best in class" practices as they currently exist, in order to drive real hazard reductions across industries. Similarly, environmental agencies should provide analyses of uses of specific chemicals across industries for some of the most hazardous substances. Under the bill as proposed, these analyses would not be available to the public. Furthermore, any state or federal government employee who makes such analyses available could be jailed and/or fined for doing so.

Finally, the Administration's bill provides a template to restrict public access to any of the data currently collected by EPA. What's to prevent a future restriction of TRI data for the 10 most flammable substances on the TRI list? Or the 10 that are judged to be the most acutely toxic? Or access to permit application data? Worst of all is the possibility that such future restrictions could pass under the guise of a "technical amendment."

Just how is it that the Administration went from restricting Internet access to OCA data only to severe restrictions on data dissemination by other means? To my knowledge, the review of Worst Case Scenario data by the FBI is the first time the FBI has reviewed chemical accident data reported by industrial facilities to determine the potential threat that on-site use of toxic chemicals pose to local communities. This is true despite the fact that more than 10 years of chemical accident data have already been widely available. In my opinion, the most significant finding made by the FBI during its review of Worst Case Scenario data was that use of toxic chemicals at facilities poses an inherent risk to workers, neighboring properties, and surrounding communities. The FBI additionally found that making the public aware of chemical use risks over the Internet would only marginally amplify this inherent, pre-existing risk.

In light of these findings, it is important to emphasize that the risks emanate from toxic chemical use at facilities, not public awareness of those risks. By not providing an alternative to public awareness and pressure, the Administration's bill fails to provide any impetus for hazard reduction. In return for ignoring the benefits generated by the public's right to know, any bill restricting access to OCA data also needs to provide that benefit. The simplest means of accomplishing that goal would be to instruct the Department of Justice, along with EPA, to identify the potential for hazard reduction, and therefore, the reduction in vulnerability of citizens to chemical exposure, whether accidental or otherwise.

Such a reduction in vulnerability should be accomplished first by using less toxic chemicals. Where reduction in use is impractical, such common-sense measures could include safer transportation, storage, and handling of toxic chemicals. Other mechanisms to be explored are increases in site security and buffer zones around facilities that cannot be made safer by other means.

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It is important to emphasize that all of the stakeholders in this process have one common interest: risk reduction. Whether you are the owner of a chemical plant, a worker, a neighbor, or a host community, everyone wants fewer and less harmful accidents. I firmly believe that accident reduction and prevention was Congress's true intent in passing 112(r). Public access to 112(r) data will greatly enhance the likelihood that fewer accidents will occur. The question before the Committee today is how we can attain risk reduction while also providing public access to this important information. Denying, or severely limiting, public access to the Worst Case Scenario 112(r) data, whether by the Administration's bill or by other means, does not relieve EPA, the intelligence community, or the chemical industry of their shared obligation to reduce risks.

Thank you again for the opportunity to address this Committee. I would be happy to answer any questions the Committee may have.

Mr. BILIRAKIS. Thank you, Mr. Natan.

Mr. McMasters.

STATEMENT OF PAUL K. MCMASTERS

Mr. MCMASTERS. Good afternoon, Mr. Chairman, and members of the committee. Thank you for allowing me to present a freedom of information perspective, along with these others that have been expressed this afternoon, on H.R. 1790.

I am testifying today on behalf of the American Society of Newspaper Editors, which represents 850 directing editors of newspapers across the country. The ASNE and its members have long championed maximum access to government information in recognition of the vital role that informed citizenry plays in assuring good governance and a secure democracy.

It is our concern that, as introduced, H.R. 1790 contradicts the traditions and principles of open government. It unwisely changes the requirements of current law. Specifically, the bill would supersede requirements for providing information to the public under the Clean Air Act, as others have indicated. It would exempt important information from the requirement of the Freedom of Information Act. It would violate requirements of the Electronic Freedom of Information Act. More importantly, it would deny the 40 million Americans who live in the shadow of those 66,000 chemical plants the information they need to act, and to demand action, to protect their loved ones and their communities.

To implement the provisions of the amended Clean Air Act, as it was amended in 1990, the Environmental Protection Agency decided initially—and quite correctly in compliance with the Electronic Freedom of Information Act—that the Internet would be the most effective and democratic way to distribute this information. Please bear in mind what the proposed risk management data base would contain: inventories of 140 different chemicals; accident histories; where and how accidental chemical releases could occur, and the populations that would be affected. This data base would not contain security information, storage tank locations, classified information, or clues as to how a release could be triggered.

As a blueprint for sabotage, the data base would not be very helpful. However, as a guide for citizens interested in making sure that chemical plants in their neighborhoods were hardened against accidental or intentional releases, such information would be invaluable. During the last 10-year period to be reported, there were more than a million releases of chemicals because of accidents, and

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not a single incident of sabotage—let alone sabotage as a result of information in the Internet.

Hundreds of citizens have been killed, and many more injured in the last few years, not as a result of terrorist action, but as result of problems not addressed at chemical plants. Nevertheless, H.R. 1790 proposes a closed system that would allow release of worst-case scenario information only to selected State and local government officials in a difficult-to-access format, and would impose fines and prison sentences on government employees who might misinterpret the requirements.

Three years after Congress passed the Electronic Freedom of Information Act, H.R. 1790 would reverse the course the Act set for more openness. It effectively says to the public that access to information in electronic format is more trouble that it is worth. Under this bill, the EPA would not be allowed to decide whether the proper guidelines for providing information in an electronic format are met; and instead, must provide this information in paper form only. Further, it would cancel EPA's authority to determine the disposition of information with which the EPA is most familiar.

As for the Freedom of Information Act, H.R. 1790 would go a step further than simply adding an exemption to the list of nine that are already there that were carefully drafted and limited. There would be no opportunity to challenge this decision, as is the case when access is blocked through one of the traditional FOIA exemptions. H.R. 1790 would substantially deprive the public and local governments alike of the following: a national data base providing comprehensive information about the size and nature of potential chemical accidents for elected leaders, policymakers, and public safety agencies; an official resource for individual citizens, civic action groups, and researchers involved in comparing and analyzing safety and security measures from community to community; authoritative data to ensure more accurate and timely reporting by the news media on safety concerns and accidents; a way for families and firms moving to new communities to assess the risks; and an instrument for evaluating the performance of elected officials and government agencies in protecting the public.

I would just like to conclude by saying for those in Congress and the administration who believe that information on the Internet poses more of threat to our safety and security than toxic and explosive chemicals in vulnerable plants, we would ask some important questions. If there is a danger of terrorist activity or targeting, wouldn't it be better if the entire community knew and was on the look-out? Wouldn't the availability of accurate, up-to-date risk management plans and the assumption that vulnerabilities were being addressed dissuade, rather than attract, would-be terrorists? If our plants are vulnerable, wouldn't the more sensible approach be to reduce the threat than to reduce the flow of information? Isn't the best defense against a terrorist armed with a modem, a community armed with information?

Mr. Chairman and members of the committee, this Nation's commitment to open government is what distinguishes us from all others, especially those who wish us harm or would do us harm. If we act to deny vital information to American citizens in anticipation that it might be used by terrorist; then without raising a hand or

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voicing a threat, a terrorist will have damaged an essential democratic tradition, as well as put our citizens and communities more at risk. In other words, the unknown terrorist would have only to sit back and wait for the next preventable chemical plant accident. If that happens; when that happens; we will have inflicted the injury upon ourselves, because we have chosen to fear the abstract notion of information in the wrong hands, over the reality of chemical hazards in the Nation's neighborhoods.

Thank you.

[The prepared statement of Paul K. McMasters follows:]

PREPARED STATEMENT OF PAUL K. MCMASTERS FOR THE AMERICAN SOCIETY OF NEWSPAPERS

Mr. Chairman, members of the Committee. My name is Paul McMasters. I am here today testifying on behalf of the American Society of Newspapers Editors as a member of that organization's Freedom of Information Committee.

The American Society of Newspaper Editors is a nationwide, professional organization of more than 850 members who hold positions as directing editors of daily newspapers throughout the United States and Canada. The purposes of the Society, which was founded more than seventy-five years ago, include the ongoing responsibility to improve the manner in which the journalism profession carries out its responsibilities in providing an unfettered and effective press in the service of the American people. ASNE is committed to the proposition that, pursuant to the First Amendment, the press has an obligation to provide the citizenry of this country with complete and accurate reports of the affairs of government—whether executive, legislative, or judicial.

I want to thank the committee for allowing freedom-of-information advocates to present their views on H.R. 1790, the Chemical Safety Information and Site Security Act of 1999. The American Society of Newspaper Editors and its members have long championed maximum access to government information in recognition of the vital role an informed citizenry plays in assuring good governance and a secure democracy.

It is our concern that some provisions of H.R. 1790 contradict the traditions and principles of open government as well as the requirements of current law. This bill would significantly restrict the flow of vital information about potential health and safety hazards at the more than sixty thousand chemical plants located in communities across this nation.

As written, this bill would cancel specific directions for providing information to the public under the Clean Air Act. It would exempt important information from requirements of the Freedom of Information Act. It would violate specific requirements of the Electronic Freedom of Information Act. More importantly, it would deny the 40 million American citizens who live in the shadow of those sixty thousand chemical plants the information they need to act and to demand action to protect their loved ones and their communities.

U.S. citizens and their elected leaders have been especially mindful of the specter of an accidental or intentional release of hazardous chemicals, explosions and fires since 1984, when a chemical plant accident in Bhopal, India killed more than 2,000 people. The reality of that tragedy struck closer to home a year later with the release of toxic gas at the Union Carbide plant in Institute, West Virginia. That accident resulted in the hospitalization of more than 135 people and the evacuation of many others.

Spurred by public anxiety about those incidents and the possibility of others, Congress amended the Clean Air Act in 1990 to require the thousands of companies manufacturing, storing or transporting hazardous chemicals to develop risk management plans to be disclosed to the public. This requirement served the purposes of making citizens and taxpayers more aware, enlisting them as partners in making communities more secure, and reassuring them that their government places the public interest above special interests.

To implement the provisions of the amended Clean Air Act, the Environmental Protection Agency has decided quite correctly, and in compliance with the Electronic Freedom of Information Act, that the Internet would be the most effective and democratic way to distribute this information. Unfortunately, reservations expressed by federal security agencies forced the EPA to abandon that strategy. As the June 21 deadline for disclosure of this information approached and the memory of those chemical disasters dimmed, federal security agencies and the chemical industry

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began to talk about a point-and-click worst-case-scenario: terrorists might use information on the Internet to create a chemical catastrophe in one or more of our communities.

Please bear in mind what the proposed risk management plan database would contain: inventories of 140 different chemicals, accident histories, where and how accidental chemical releases could occur, and the populations that would be affected—in other words, "worst-case scenarios" and "off-site consequence analyses." This database would not contain security information, storage tank locations, classified information, or clues as to how a release could be triggered. In other words, as a blueprint for sabotage, the database would not be very helpful.

As a guide for citizens interested in making sure that chemical plants in their neighborhoods were hardened against accidental or intentional releases, however, such information would be invaluable.

The concerns of agencies and officials charged with protecting us from terrorist attacks certainly are understandable. But restricting the flow of information leaves citizens in ignorance while a variety of information is readily available to would-be terrorists who care to check telephone and city directories (online or off-line), attend chemical industry trade shows, check out chemical manufacturing directories in libraries, peruse EPA databases already posted, or even access congressional testimony posted on the Internet.

It seems a safe assumption that a terrorist organization would be much more likely to select a chemical plant target based on political impact or inside information about vulnerabilities than as a result of its appearance in an Internet database. And it seems prudent to keep in mind that, during the latest 10-year period to be reported, there were more than a million releases of chemicals because of accidents and not a single incident of sabotage, let alone sabotage as a result of information on the Internet. Hundreds of citizens have been killed and many more injured in the last few years, not as a result of terrorist action but as a result of problems not addressed at chemical plants.

Nevertheless, H.R. 1790 proposes a "closed system" that would allow release of worst-case scenario information only to state and local government officials in a difficult-to-access format and would impose fines and prison sentences on government employees who might misinterpret the restrictions.

Further, this legislation conflicts with the Electronic Freedom of Information Act of 1996. EFOIA states: "In making any records available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily repreducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section." 5 USC §552(a)(3)(B). Three years after Congress passed EFOIA, H.R. 1790 would reverse the course toward more openness set by that Act. Instead of heeding EFOIA's mandate that all records be provided in any form or format in which they are readily reproducible, H.R. 1790 explicitly acknowledges that this choice is no longer in the hands of the requestor, and tips the scales of access back to the government.

EFOIA also states: "In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system." 5 U.S.C. §552(a)(3)(C). Three years after the passage of EFOIA, H.R. 1790 effectively says to the public that access to information in electronic format is more trouble than it is worth. Even though there is no evidence that searching for worst-case scenario information would do damage to the agency's automated information system, and even though these records are available in electronic format, the EPA is not allowed to decide whether the proper guidelines for providing information in electronic format are met and instead must provide this information in paper form only.

Finally, EFOIA states: "Each agency, in accordance with published rules, shall make available for public inspection and copying... copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records." 5 U.S.C. §552(a)(2)(D). Again, only three years after EFOIA afforded federal agencies the opportunity to reduce the volume of paper records they must keep, reduce the expense of copying these records, and to reduce their own workloads, H.R. 1790 would cancel the EPA's authority to determine the dissemination of information with which the EPA is most familiar. The EPA would have no discretion in determining whether worst-case scenario information is useful and desirable enough to the public to put in electronic format or whether it is just another record.

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Freedom of information advocates, including ASNE, maintain that the Freedom of Information Act is a general law and should not be amended for special interests or special categories of information. The law has served democracy for more than three decades, providing access to all information, except for nine specifically drafted and limited exceptions. H.R. 1790 would go a step further than simply adding to this list by removing an entire set of records from the purview of the FOIA. There would be no room for interpretation by the EPA as to whether release of these records pose a real danger and no opportunity for anyone to challenge this decision, as is the case when a request is denied due to one of the traditional FOIA exemptions.

More generally, H.R. 1790 approaches this admittedly sensitive situation as if information poses more of a threat to U.S. citizens than the toxic chemicals manufactured and stored in their communities. That approach puts data in a meaningful and utilitarian form beyond the reach of ordinary citizens who would be more likely to press for additional safety measures if they were fully informed about potential dangers and more knowledgeable about what other communities in similar situations were doing. In effect, H.R. 1790 would substantially deprive the public and local governments alike of the following:

A national database providing comprehensive information about the size and nature of the potential chemical accidents for elected leaders, policy makers and public safety agencies;

An official resource for individual citizens, civic action groups, and researchers involved in comparing and analyzing safety and security measures from community to community;

Authoritative data to insure more accurate and timely reporting by the news media on safety concerns and accidents;

A way for families and firms moving to new communities to assess the risks; and

An instrument for evaluating the performance of elected officials and government agencies in protecting the public.

The public needs to know whether local plants are employing new technologies and techniques that use fewer chemicals, operate at safer pressures and temperatures, reduce storage amount and time and cut down on the frequency and distance of transportation. Citizens need to know what the companies in their midst are doing about secondary containment, automatic shutoffs, alarms, fences, barriers, buffer zones, security forces, and the off-site impact of a chemical release.

H.R. 1790 would compromise and complicate access to such information.

There are good examples of how providing information about chemical and pollution hazards benefits both the public and the chemical industry. The EPA's Toxic Release Inventory, for example, was opposed at the time it was being debated for many of the same reasons the worst-case scenario information is opposed now. Yet the TRI has led to significant reductions of chemical dangers and releases as well as improved safety and security in communities across the nation.

For those in Congress and the administration who believe that information on the Internet poses more of a threat to our safety and security than toxic and explosive chemicals in vulnerable plants, we would ask some important questions:

If there is a danger of terrorist activity or targeting, wouldn't it be better if the entire community knew and was on the look-out?

Wouldn't the availability of accurate, up-to-date risk management plans and the assumption that vulnerabilities were being addressed dissuade rather than attract would-be terrorists?

Wouldn't the more sensible approach be to reduce the threat than to reduce the flow of information?

Isn't the best defense against a terrorist armed with a modem a community armed with accurate information?

Mr. Chairman and members of the Committee, this nation's commitment to open government is what distinguishes us from others—especially those who wish us harm and would do us harm. If we deny vital information to American citizens in anticipation that it might be used by terrorists, they will have damaged an essential democratic tradition as well as put our citizens and communities more at risk. This without a single terrorist raising a hand or voicing a threat. The unknown terrorists only have to sit back and wait for the next preventable chemical plant accident. If that happens, when that happens, we will have inflicted the injury on ourselves because we have chosen to fear the abstract notion of information in the wrong hands more than the reality of chemical hazards in the nation's neighborhoods.

Thank you. I will be happy to try to answer any questions you might have.

Mr. BILIRAKIS. Thank you very much, Mr. McMasters.

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Honestly, you all have raised some very valid points. The administration was charged—charged themselves, if you will—with the responsibility of crafting a piece a legislation some few months ago.

Ms. Kinsey, others have said that you really haven't had much of an opportunity to review this legislation to see how it might work from a real world, practical standpoint. Frankly, we have not had that much of an opportunity either. Why? Because we received the legislation a few days ago. We have had one hearing on it already. The minority and majority have been working very intently over these last few days addressing—many of your concerns. I would wager, that they have addressed the majority of them and maybe, virtually every one of them. We are concerned about many of the same things that you have raised.

I would ask you, Ms. Kinsey, has the administration tried to communicate with your office at all? They say you should never ask a question unless you know the answer. I have no idea of the answer.

Ms. KINSEY. No, Mr. Chairman, not to my knowledge. I will say not to my knowledge. If there was contact, I am not aware of it.

Mr. BILIRAKIS. To your knowledge, have they made any attempt to communicate with any other States attorney generals?

Ms. KINSEY. Not to my knowledge. Not to my knowledge.

Mr. BILIRAKIS. How about the rest of you—any attempts been made to communicate with you; to get your opinions, your inputs? Mr. Billings?

Mr. BILLINGS. They have certainly made no attempt to communicate with the National Conference of State Legislatures. Obviously, I wouldn't know about individual legislatures. But I have a hunch that this has been pretty much inside baseball.

Mr. BILIRAKIS. Well, time is kind of a-wasting here. Mr. Grumet made that point very well. Many of us feel that something needs to be done. We also feel that we want to try to do it right, but we have to do it within the confines of the time that we are faced with.

Well, I am not going to go into any specific questions here now. Considering that we don't have really all that much time, we are open-minded and would like to get your inputs. If you have any additional comments, please feel free to submit those to us. At the same time, our staffs may be submitting written questions to you, which request written responses. Obviously, those responses would have to be turned-around quickly, unfortunately. Please try to understand our role in all this and the significance of what we are trying to accomplish. Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman. The letter that I mentioned in my opening statement from Mayor Qualls in Cincinnati points out her concern about criminal penalties for the release of information that local staff or elected official could be subject. She says that it is unprecedented for locally elected officials to face possibility of jail time based upon guidance from the EPA administrator. Ms. Southwell, in your testimony you mentioned—in your written testimony, sorry I wasn't here for your oral testimony—under section C, part A, if members of LEPCs, as either employees or volunteers to the local government do the task required of them they can be arrested, fined or jailed for up to 1 year.

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I guess I am asking any of you if you know of any precedent for any EPA guidance having this effect on the State and local government? That is the first question. Second, I guess for you, Ms. Southwell, if you would sort of talk about the effect that has on recruiting the volunteers and hiring—that sort of thing. Start with if any of you know of any precedent for any EPA guidance? Ms. Kinsey?

Ms. KINSEY. No, Congressman, I am not aware of any.

Mr. BROWN. Mr. Grumet?

Mr. GRUMET. My members and directors are often underpaid. They are often disrespected. They have never been jailed or fined, to my knowledge.

Mr. BROWN. That is where it starts. Ms. Southwell?

Ms. SOUTHWELL. Well, as a person who works for county government, we have to be very cautious and careful about protecting the rights of citizens; of taking care of people in our community. It is what our job is really all about. I can truthfully say that never once have I ever been concerned that in working at a spill site, doing planning, or doing any of the other jobs that I have done for Washtenaw County, that I would not have the full support of that county. Never once was I concerned that I was going to be sent to jail for a year, or be fined, because I was doing my job. What really alarms me about this is that I see this as a no-win situation for a person on the LEPC. I added some appendices of different legislation. Under SARA title III, I am required to do this; this is part of my job. Under this bill, if I do my job, then I am facing penalties and possible jail time. I see this as a terrible conflict.

One of the wonderful things that LEPCs have done in the past 12 years is that they have brought to the table citizens, facility coordinators, business owners, professionals, and advocates for the environment and have really built some incredible relationships. Based on those, in our community alone we have seen these relationships continue to grow and become partners in things like pollution prevention. We have seen people, who before were at opposite ends of the table, sitting down together and taking those chances, and taking that opportunity to protect our community and take good care of the environment where we all live together. It opened the door for that trust and credibility when we had to sit down and start planning together because it was required of us. We didn't like each other, necessarily, at first. Now we get along pretty well. If you close that door, and you hide things again, what is the message to the communities? What is the message to people if we take those steps that government worked so hard to open?

I have a lot of concerns. It will impact our LEPC. Frankly, if I were those people, I would quit. I can't because it is my job. They promised that they would protect me if I go to jail.

Mr. BROWN. Thank you. Anybody else want to add to that?

Mr. BILLINGS. Congressman, an additive point is that because this legislation not only is preemptive, it also would expose officials operating under State law to these penalties. So if the State of Maryland enacted its own legislation which gathered similar kinds of data, these employees would be exposed to those Federal penalties if they released the data that was gathered under State law. That is almost preposterous. I think it is preposterous.

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Mr. BROWN. Ms. Kinsey, what happens to worst-case scenario data in an area near a State line? Is there a problem of Maryland sharing with Delaware, or Maryland sharing with Pennsylvania? To me it seems that it is not clear in the legislation what happens there. What is your read?

Ms. KINSEY. I think that the legislation purports to prevent Maryland from sharing such information. I think a real concern that we have is that when a citizen of Maryland requests of its State and local government information relating to a border facility—a facility that is located in another state, but very close to the state line—which does clearly have an impact environmentally, or in health or safety respects on that particular citizen or its community; the State, as I read this bill, would be precluded from providing that citizen with that information. I think our citizens in Maryland—and I think I probably speak for other attorneys general—have a legitimate right to expect their local government to be able to provide them with that kind of information. We are not clear on the justification for that provision in the bill.

Mr. BILIRAKIS. Did you want to add something to that?

Mr. GRUMET. For a moment. The whole very purpose of our organization is based on the premise that air pollution doesn't attend to these political boundaries. The goal of working together to come up with a more regionally appropriate solution, we think, is very challenged by the ideas in this bill.

Mr. BILIRAKIS. Well put. Mr. Burr.

Mr. BURR. Thank you, Mr. Chairman. Ms. Southwell, I fully understand the concerns that you have as it relates to the criminal penalty part. The EPA is—I think—on record as saying that they are working to clarify that language. I think the EPA, if they were here today, would say that for the LEPCs, once they fix that criminal penalty clause, that you would be able to give oral presentations on worst-case scenarios; distribute written copies of worst-case scenarios; prepare overhead presentations of worst-case scenarios; prepare analysis and research of worst-case scenarios; and prepare and distribute information or brochures on worst-case scenarios.

Given that, which is full access to disseminate this information, with the exception of it being electronic access or electronic distribution, would that eliminate your concerns?

Ms. SOUTHWELL. No it wouldn't. I didn't get an opportunity to address that, but it is in my testimony. It will eliminate my concern about going to jail. I will sleep better tonight. We have over 1,400 records already in Washtenaw County that we are preparing to put on our website.

Mr. BURR. So you would be against this bill because it limits you from not being able to access it electronically?

Ms. SOUTHWELL. Absolutely. Think about 66,000 facilities and all of LEPCs hammering at the door of EPA—because that is where the information is going—to get that information so that we can plan effectively for our communities.

Mr. BURR. Clearly, the intent is to have the information out. That is still to be worked out. Mr. Grumet, if it is not electronically you are against it—perfect bill, but not electronic?

Mr. GRUMET. Well, I think it is——

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Mr. BURR. It is a yes or no. I have only 5 minutes.
Mr. GRUMET. Yes, I am still against it.
Mr. BURR. Ms. Kinsey?
Ms. DEGETTE. Yes, I think would have to say.
Mr. BURR. Mr. Natan?
Mr. NATAN. Yes.
Mr. BURR. Mr. McMasters, I think I know your answer.
Mr. MCMASTERS. Absolutely.
Mr. BURR. I look forward, the next time, to see your journalist notes listed also next to the story so that we can get the full story as well. Mr. Billings—Representative Billings, excuse me.
Mr. BILLINGS. Delegate, actually; but, yes.
Mr. BURR. Representative Billings, you have quite a history in Washington; one that goes back with some very distinguished fellows. Certainly, your election to the House of Delegates is one that gives this committee an indication of just how well thought of you are.
Today, though, are you here as a State legislator, or as a lobbyist?
Mr. BILLINGS. I am here as a State legislator.
Mr. BURR. The reason I ask the question is that most who come list their disclosures on who they represent. I think that you can probably understand why we might have a concern and need the clarification.
Mr. BILLINGS. Congressman, in the first place, I wouldn't be here if I were representing anybody except in my capacity as I disclosed at the beginning of my statement.
Mr. BURR. None of you current or past billing customers would have an interest in the outcome of this legislation?
Mr. BILLINGS. My past? I don't know. I used to represent the South Coast Air Quality Management District. They probably would be concerned by this legislation.
Mr. BURR. As a State legislator, do you understand the unique responsibility that we have to balance the national security with the community right-to-know as it relates to this?
Mr. BILLINGS. Yes. As a matter of fact, Congressman, I was thinking during this testimony about that there is always a tension between the exercise of the police function and the protection of a robust democracy. Historically, this country has erred on the side of protecting a robust democracy and restraining the police function. I think that is a lesson that is well applied in considering this legislation. We have to be extremely careful when we say that the communities' right-to-know and government agencies' right-to-know is less important than some demonstrated police or security concern. I think we have to be very careful.
Mr. BURR. Thomas Jefferson said, "I am not an advocate of frequent changes in laws and constitutions. But laws and institutions must advance to keep pace with the progress of the human mind." I think to future legislators, that was a message that we must change as society changes. We must stay ahead of the technological curve.
I think it also works in reverse. We must understand the full impact of technology. The fact is, if this were 12 years ago with no

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developed Internet, we really wouldn't be here, because one of the options on the table would not be electronic transfer.

Assuming, Ms. Southwell, that we have the criminal penalty side fixed—I think that is a commitment that we all have—would there be anybody that would disagree that if there was not an Internet and we fixed that part, we wouldn't be here? It wouldn't be an option on the table to have electronic transfer. I think that Jefferson's words are important for us to look at and to say—in this particular case—if we look for that balance, hopefully we don't err too far on the side of the police state. Hopefully, we do fulfill the law as it relates to the community right-to-know. Finding that balance is important. I don't think, Representative Billings, that it is limited to a Republican Congress, as you stated in your testimony.

Mr. BILLINGS. I actually corrected that and said the administration and a Republican Congress.

Mr. BILIRAKIS. With all due respect, sir, it isn't the Republican Congress. It is just that we have the responsibility here of addressing it. The Democrats would have the responsibility of addressing it if they were they majority.

Mr. BURR. One of the few times that we have been asked to carry the administration's order, I think, Mr. Chairman. I thank all of you for your willingness on short notice to come before the committee and be candid about your position on these issues.

Mr. BILIRAKIS. The gentleman's time has run out.

Mr. BURR. I yield back the balance of my time, Mr. Chairman.

Mr. BILIRAKIS. You are always yielding back the balance of the time that you don't have, Richard.

Ms. DeGette.

Ms. DEGETTE. Thank you, Mr. Chairman. Also, thank you to my colleague from California for letting me go out of order. Thank you, Mr. Chairman, for holding this follow-up hearing to what I thought was an illuminating hearing last week, but not complete. Certainly this panel's testimony gives us more complete information.

You spelled it all out pretty well for us. I guess I would like some of you—or all of you—to comment briefly on what threat you really think posting this information on the Internet would give, via terrorists or criminals getting this information in ways that they might not have it? How much if this information will they get that they wouldn't be able to get otherwise? Maybe, Ms. Southwell, you could start and tell me: the facilities you work with, are they worried that there would be information posted that wouldn't otherwise be there?

Ms. SOUTHWELL. Actually, they are not. I think the reason for that is because their concern, back when we started doing planning, was that maps of the facility would be available to the public and something terrible was going to happen. They were worried 12 years ago that the bomb would fall right on their facility if they had the map. That kind of mapping is not going to be available. Anyone with a pencil and a National Response Team guidebook, just via the chemical inventory, could sit down and create a plume model; would know how bad this could really be; and would know what the potential consequences would be if they blew up that facility—if that is, indeed, the concern.

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So that information has been out for so long. Facilities are not concerned about that at all. They are much more concerned about getting their risk management plan in by June 21.

Mr. GRUMET. If I could add to that, Congresswoman? Your question and earlier questions make a presumption that, I think, is worth exploring: that this law, in fact, would stop this information from getting on the Internet, even with the punitive penalties at avail. It was only a couple of weeks ago when of the names of several—tens, I think, if not hundreds—British secret agents were posted on the Internet. Now, obviously, that is a security breach the likes of which nothing here we are talking about obtains. What I suggest is that in free democracy, controlling information is ultimately—I think—a failing exercise.

I would suggest to you that this information will wind up on the Internet regardless—fortunately or unfortunately—of what happens here. Rather than trying to invest our resources in trying to constrain and control that, we would be better served to use that information to protect ourselves. I refer back to the other comments that many of us have made: we think there are many opportunities to make these sites much more secure than they are today.

Ms. DEGETTE. Anyone else?

Ms. KINSEY. I would just agree with both Mr. Grumet's comments and Ms. Southwell's comments. We think that a lot of this information is out there now. Maryland is one of the States that has been encouraging this kind of exchange of information between facilities and the communities that those facilities are located in, for a number of years now. So, I would agree that this information will make its way onto the Internet.

Ms. DEGETTE. And I would assume, Ms. Kinsey, that facilities are taking steps to protect themselves against terrorist activity, based on the assumption that people have full information from other sources.

Ms. KINSEY. Yes, I would assume that to be true. I don't have personal knowledge, myself, of what security measures or plans have been implemented; but I would assume that to be the case.

Ms. DEGETTE. Great. Thank you very much. I will yield back.

Mr. BILIRAKIS. I thank the gentlelady. Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman. I apologize to this committee and the witnesses for being late. I was unable to hear most of your testimony. I have skimmed through some of the statements that you have sent to us.

I appreciate where you all are coming from, and the fact that you do have legitimate concerns. As our subcommittee chairman has indicated, there are problems with this bill that can be, I believe, fixed. We are all after the same end here, that is: public safety. Whether it is from an accidental situation at a plant, or whether it is from a terrorist bomb or action, there is a potential for public risk to public safety in either event. What we are trying to do is come up with a bill that fulfills the law; and in an appropriate way, balances those competing interests.

I think it has also been made clear to all here that this bill has been hashed out over a period of time by various groups, including the President, the Department of Justice, the EPA, and the FBI—people like that who, by and large, have that same public interest

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at issue. Particularly with the EPA, if they are going to tilt one way or the other, it is going to be to the public safety from accidental discharge, public knowledge, and access to this knowledge. It seems to me that those folks are the ones that are going to typically be that way.

Maybe the FBI tends to be more the other way. I am certainly impressed by the FBI and have been a supporter of those folks for a long time. Am I correct in understanding that none of your groups were consulted during this? You all are nodding "yes." Your presence today and input into this is going to be taken into consideration as this bill is worked through this subcommittee, the full committee, the full House, and ultimately the Senate. Hopefully, the President will sign a bill.

I do appreciate your coming here and giving your opinions. Mr. McMasters, I have represented a newspaper before—not on this issue—but other things: freedom of information actions, sunshine law violations, as well as libel lawsuit, and things of that nature. I appreciate your interest.

I would tell you that from my standpoint—Ms. Kinsey, you being a State attorney general, maybe we have some commonality here on this point—I have a great deal of sympathy for what the law enforcement people are trying to do here, too.

Again, that is why we are all paid so much up here. We are to try to strike that fair balance that maybe makes everybody mostly happy, but not completely happy. Clearly, the issue of the criminal penalty is something that I think we can all agree on there. That is going to have to be reworked. I am optimistic. We have a lot of bright people on the subcommittee and the committee—I am talking mainly about the staff people. We do appreciate your accommodating us on such a short time schedule.

I yield back my time.

Mr. BILIRAKIS. I thank the gentleman. Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. I have listened very carefully to what Mr. Bryant had to say. I think we are all struggling with this question. If you look at it from the perspective of information being on the Internet, and a terrorist searching for information; you could come up with this conclusion: don't let anybody have any information. If nobody has information, then terrorists won't have information.

But the only way this bill deals with the possible terrorists threat is to stop the flow of information. It doesn't deal with—it seems to me—the more logical concern, and that is the security of these sites where the facilities are located. I thought Mr. McMasters, in the last couple of pages of his testimony, was right on target: "For those in Congress and the administration who believe that information on the Internet poses more of threat to our safety and security than toxic and explosive chemicals in vulnerable plants, we would ask some important questions." He asks wouldn't it be better if the entire community knew and were on the look-out? Wouldn't the availability of accurate, up-to-date management plans and the assumption of vulnerabilities being addressed dissuade, rather than attract terrorists? The more sensible approach would be to reduce the threat than to reduce the flow of information.

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Mr. Billings cited the statements put in by the ATSDR. They said in one of their reports that, "Security at chemical plants ranges from fair to poor." They point out that security measures at abortion clinics is, in general, far superior to the security at chemical plants. That doesn't make any sense; except they realized that they are vulnerable so they have tried to take steps to protect themselves.

Chemical plants ought to be taking steps, as well. In fact, one of the proposals that we have made is that there be a task force convened to look at ways to make these sites more secure. That should be the primary way to deal with a possible threat.

I was trying to listen carefully to Mr. Burr's question. He was asking what if we dropped the criminal penalties out of this bill? The criminal penalties, obviously, make no sense. It is just absurd that someone should possibly be facing criminal charges for disseminating information that is publicly available. Even with criminal penalties out, if the fear is with information getting on the Internet, somebody is going to put it on the Internet. Isn't that right? Mr. Grumet, you are shaking your head.

Mr. GRUMET. In my experience. I don't surf the Web often.

Ms. SOUTHWELL. I surf the Web a lot.

Mr. WAXMAN. Are you a terrorist, by any chance?

Ms. SOUTHWELL. Not yet.

Mr. BURR. If the gentleman would yield. Clarifying the language was the term I used. Not dropping it; but clarifying the language for criminal penalty.

Mr. WAXMAN. So you would keep some criminal penalties?

Mr. BURR. I am using the EPA's terminology. I don't know how they define that, yet.

Mr. WAXMAN. I don't want to attribute anything to you that would not be your point of view. You were suggesting that if they modified or changed the language of the bill—which has to be offensive to all of us in the way that it is presently drafted—would it be acceptable? It just seems to me that it does not stop the problem of information that is made public being known by the public, and people in the public that we wish didn't have that information.

So the question is: should we stop the flow of information when we know that flow of information can be so important to prevent accidents to prevent possible terrorist attacks? Should that be our focus; or should we put our focus on the site?

Mr. McMasters, you had a whole litany of things that you thought could be done at these sites that might be helpful.

Mr. MCMASTERS. As we have seen with the toxic release inventory, Congressman, there has been all sorts of improvements that I think can be directly attributable to the release of information to the public.

Mr. WAXMAN. What about the sites?

Mr. MCMASTERS. Well, the kinds of things at the sites that I think are interesting as far as getting information to the public, is looking at—I am trying to find the actual list that I gave, here——

Mr. WAXMAN. Well, on page six.

Mr. MCMASTERS. "Citizens need to know the companies in their midst are doing about secondary containment, automatic shutoffs, alarms, fences, barriers, bugger zones, security forces, and the off-

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site impact of a chemical release." All of those kinds of things are starting places with this data base that originally was proposed by the EPA. The EPA backed off the proposal of putting this on the Internet after being contacted by the FBI, who was contacted by the Chemical Manufacturers Association.

So I feel that there is probably more people out there that people wouldn't want getting hold of this information in a data base-searchable form, including journalists.

Mr. WAXMAN. Thank you, Mr. Chairman.

Mr. BILIRAKIS. Thank you, sir. Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I want to welcome Delegate Billings. I was a state senator and Mayor Whitmire, in Houston, appointed me to our LEPC in the 1980's. I think it was a punishment, because I had to run for Congress to be able to leave gracefully.

I do know in the inception of it—and it worked for the first time—the industries I represented actually sat down with emergency personnel in the city of Houston, because that was our area, and shared that information. That is what I fear with this. My good friend, Richard, I think you have a point: if we didn't have the Internet, we wouldn't be worried about it. But, frankly, we could go back to stone tablets.

I have found that you cannot stop technology. If we are going to say that you can't put it on the Internet and it is still public record, somebody will have access to it. If you are worried about it going to some foreign country—it can be mailed. There are lots of ways to do it. I also understand the difference in police versus public information in our national security. That is why this is cloaked in national security.

Nobody ever asked me as a State legislator whether I had anything to do with national security, but that is our role here. That is why I think the balance, if we can find something. Let me ask first, I think we all agree that the bill is well-intentioned. How can we address the fear and still eliminate some of the major flaws? Do any of you have any suggestions on how we can change the bill? Other than tinker with the criminal penalties, can we protect the community's right-to-know and share the information, and yet still limit the risk?

Actually, Mr. Waxman is correct. There is not a business in the country that can't do better, whether in this business or anything else. Do you have any suggestions on the actual legislation?

Mr. BILLINGS. Well, one, I think that several members of the panel have suggested that if you going to make these kinds of judgments, they ought to be case-by-case decisions, and not exempting 66,000 facilities without any determination as to what the nature of the risk is, and so on. So, one is case-by-case.

No. 2, is the ATSDR report that Congressman Waxman cited. It suggests that there are a number of the facilities which, apparently, are not secure. So, it would seem to me that the second thing you would do would be to address the question of the extent to which you have secure facilities. Once we have secure facilities, and trained personnel, and so on; then I think you can go to the next step of determining what the risk is, and talk about legislation like this.

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Mr. GREEN. Any other suggestions?

Ms. SOUTHWELL. One of the things that I have also done as part of county government is to work with emergency management, which would be like the local county branch part of FEMA. It was required to do risk and hazard analysis. They are quite capable of that, and putting together an emergency operation plan of which the LEPC plans all come together. I think that emergency management is very capable at the local level of working with facilities at helping them assess their vulnerability, and to looking at what kind of risks and hazards that these facilities have in the community. I think that is a natural arm that is already in place to address this particular issue. The technical guidance is there. The information is there. I think that that would be a much better way: to work with those facilities in what makes them vulnerable and how can be best prop that up, as opposed to taking away their right to information.

Mr. GRUMET. If I could just also amplify. I think the Northeast States, essentially, share Delegate Billings' notion that of the 66,000 facilities, there has got to be some variation of risk. If there might be a couple of hundred facilities which, due to their very dangerous chemicals and their dramatic insecurity, should be exempted from this—recognizing that, therefore, there would be a process in place to fix that problem, not just obscure it—would be a very different approach to this legislation. I don't have a particular legislative proposal, but that concept strikes me as appropriate.

Mr. GREEN. I think that gives us something. Before I run out of time, let me ask something else because we are up to the June 21 deadline. Things happen quicker in the House of Delegates than it does in Congress. To change this, do you think, Mr. Chairman, we might look at passing on a short basis an extension of that deadline to be able to work out something like giving the authority of case-by-case, if there is a real national security, compared to, like you said, the number of facilities?

Mr. BILIRAKIS. Was that a question?

Mr. GREEN. That was a question. Extending the deadline.

Mr. NATAN. As long as there some provision for, during that time, also assessing what the benefits of risk reduction might pose toward countering any decrease in information available to the public. Also, simply, if a certain time expired and they have not reached that compromise, that information would simply be available.

Mr. GRUMET. Can I add to that? Extending the posting deadline should have no basis on the submission deadline. I would see those as separate questions.

Mr. GREEN. Yes, the submission deadline. Again, I know that, at least in my area, they have been working to be able to do that.

Thank you, Mr. Chairman. Thank you for doing the hearing today. I think it has given us another side.

Mr. BILIRAKIS. It has. Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman. I also thank you for holding the hearing today. I apologize for missing much of the testimony. So my questions may be redundant, or might be pretty elementary. Perhaps you can better understand some of the concerns that we have here.

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My understanding is that the information that we are talking about is kept by a Federal depository library. The question that I have, for any of you that might know the answer to this, whether you know of any Federal statute that provides that information that is kept by a Federal depository library can only be disseminated in certain electronic formats, or that place restrictions on the ability of the patrons to copy them?

Nobody? Okay. The second question has to do with—I think Mr. Waxman made reference to the criminalization here—whether there is a precedent for criminalizing the release of information in an electronic form that would not be a crime to release in a non-electronic form? Are we going in a new area here? Mr. McMasters, do you know of any?

Mr. MCMASTERS. I know of no example of that, sir.

Mr. NATAN. With regard to electronic form of information, as Mr. Burr has asked before, the simple fact of having it available electronically means that you as a local citizen, who may be subjected to 80 or more chemical plants in a 50-mile area around your home, can easily prioritize which ones you need to worry about, rather than looking through thousands of pieces of paper. That is the advantage of the electronic dissemination. All it takes is a simple spreadsheet given to you on disk. It does not have to come over the Internet.

Mr. BARRETT. Okay. Ms. Southwell?

Ms. SOUTHWELL. I just wanted to say that we are already preparing to put our SARA title III facility plans online. Many of the facilities that are captured under the Clean Air Act amendments are also SARA title III facilities. So if we move forward, under this legislation, with those plans to do best we can for the spirit of community right-to-know—you know, make that as available as possible—I am afraid we are already going to be in trouble. Until we hear about whatever happens with this bill, we are not going to be able to move forward.

Mr. BARRETT. Not really. At the risk of showing what a computer Neanderthal I am, with the prohibition, I assume it means you can't create a website with this information on it? Is that what we are saying here?

Ms. SOUTHWELL. It is not just a website. It means that there can be no electronic transfer of the data.

Mr. BARRETT. I could not e-mail information?

Ms. SOUTHWELL. Right.

Mr. NATAN. You couldn't even get it on diskette.

Ms. SOUTHWELL. Right, because that is electronic.

Mr. BARRETT. You could not use this method of communication, period.

Mr. NATAN. Only on paper.

Ms. SOUTHWELL. You cannot use your computer, at all.

Mr. MCMASTERS. That would thwart, for instance, the ability of researchers, journalists and others being able to do comparative analysis using the data base information; and report to all of those American citizens who don't have access to the Internet; and give them some idea of what is out there and what one community is doing as opposed to another community; and what one plant is doing as compared to another plant.

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Mr. BARRETT. If one of you would play devil's advocate and tell me why we would want to prohibit Internet or electronic communication, but not paper communication. What is the argument for doing that?

Ms. SOUTHWELL. I think that one of the things that will happen—and it was addressed before, but I would reiterate again—is that if this is available on paper, someone is going to take it and put it on the Internet, anyway. It is just going to happen. That needs to be a longer and more thoughtful process. If it is available on paper, it doesn't mean that I will put it on the Internet. But it could be that a citizen comes into my office and asks for that information. We make them copies. They put it out there. It will still be there.

Mr. BARRETT. Okay. Finally, I think we understand the goal of the legislation. Is there another way that you would fashion trying to deal with this problem? Again, Mr. McMasters, I think in your testimony you talked about all the accidents at chemical companies, as opposed to sabotage that occurs on the Internet. Are we searching? Do you think there is another way to get at this issue?

Mr. MCMASTERS. My suggestion was that in restricting this flow of information, and preventing it being posted electronically, you are just really inconveniencing the citizens. The determined terrorist, who really is wanting to target an individual plant, or plants, already has any number of ways of getting at this kind of information. It is the citizens who are denied the information that they might be able to harden their communities and the plants from them.

Mr. BARRETT. Thank you. Thank you, Mr. Chairman.

Mr. BILIRAKIS. Thank you, Mr. Barrett. Mr. Stupak, to inquire.

Mr. STUPAK. Thank you, Mr. Chairman. I apologize for being late. I had a number of other things going on today. Ms. Southwell, you are a coordinator for a local emergency planning committee, in Ann Arbor? Could you explain to me the importance for you to be able to disseminate, electronically or otherwise, information that identifies a likely plume dispersion path of each chemical in the worst-case scenario; and to identify potentially affected regions and populations? Explain why that is important to you.

Ms. SOUTHWELL. Why it is so critical?

Mr. STUPAK. Yes.

Ms. SOUTHWELL. It is critical to citizens, to the people who live in our area, because it lets them begin to make informed decisions about choices that they are going to make. It can help them be prepared for just-in-case. It doesn't mean panic. It just means being prepared for just-in-case. There are things that you can do. We all saw them during the war, when people in Israel were putting plastic up over their windows, and had a central room. That is one of the things. We would like to help them be prepared.

One of the things that we have done is that we have helped our hospitals, through looking at our chemical inventories in our community, determine what kind medications they need to keep on hand in case there is a spill in our vicinity. Some of those medications are time-sensitive and very expensive. So this helps them be prepared as well.

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Mr. STUPAK. Do you have a lot of that information out right now, electronically, for people to access?

Ms. SOUTHWELL. We were in the process of putting it on our website. We have a lot of the information up there. We have been putting it into tables, and creating all the mechanisms we needed to post that all to our website. So, we were going to go forward on that, as well.

Mr. STUPAK. Okay. Thanks. Maybe to Mr. Billings and Ms. Kinsey, the application of this legislation to States that have been delegated by section 112(r); two States and two territories have already received delegation, and over a dozen others have applications pending. EPA officials have told the staff that in their opinion, States that have received delegation of the section 112(r) program, in lieu of the Federal Government, are preempted by this legislation and by the terms of whatever guidance that is issued. Is the preemption of State programs, in States which have been delegated the section 112(r) program, of any concern to you—the preemption issue?

Ms. KINSEY. Congressman, we haven't had a chance to look at that issue. It was an issue that was identified recently. I am not sure, at this point in time, exactly what the impact is going to be on States that have received delegation, or wish to receive delegation. We would be happy to follow-up with the committee on that issue.

Mr. STUPAK. Mr. Billings?

Mr. BILLINGS. Yes. It is my impression, Congressman, that as you stated, those programs would be preempted back to the Federal Government. The delegation would disappear. Of course, our problem is not just with the preemption as it applies to the delegated States, but the overall preemption in the bill as it applies to environmental responsibility.

Mr. STUPAK. Okay. Well, can the State officials in the delegated States distribute the OCA information by e-mail to a community group, or a school parents' organization, for every facility within a 50-mile radius of their school or housing subdivision?

Mr. BILLINGS. I would think that both on the face of the legislation, it could not. Also, we have no idea what this guidance would say, which would make it even more difficult.

Mr. STUPAK. Anyone else want to answer that one?

Mr. NATAN. It prohibits all electronic dissemination of this information: e-mail, Internet, disk, tape, CD—whatever.

Mr. STUPAK. Anyone else? Mr. Chairman, I yield back. Those were the three questions that I had.

Mr. BILIRAKIS. Thank you, Mr. Stupak. Well our timing, for a change, was perfect, because we have a vote on the floor. We will finish up.

I do want to, first of all, thank you so very much for taking time to be here. You have been very helpful. Many of your points, I have already told you, have been recognized by the committees' staffs. We have submitted a request to the EPA that we are waiting for now, for corrective-type of language as far as the legislation is concerned. Hopefully, we will ultimately come up with a package which is not as ruinous as many of you may think it is. Let us see

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what happens. You have been very helpful. We appreciate it very much.

The committee is adjourned.

[Whereupon, at 4:17 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

The National Conference of State Legislatures understands the goals underlying H.R. 1790, the Chemical Safety Information and Site Security Act of 1999. This bill is intended to protect human health and the environment by keeping off-site consequence analysis (OCA) data from being available as a nation-wide searchable database on the Internet. OCA information includes descriptions of the worst possible effects that a chemical spill would have on neighboring populations and the environment, also referred to as "worst-case release scenarios."

NCSL understands that H.R. 1790 is intended to provide the following:

- All information in risk management plans submitted by facilities that contain hazardous chemicals will be available over the Internet, as required by the Clean Air Act. The only portions of the risk management plans that will not be posted are OCA data.
- State and local government officials will have access to OCA information in electronic form as a nation-wide, searchable database.
- States will be allowed to distribute limited numbers of paper copies of OCA information to the public upon request. The U.S. Environmental Protection Agency will be responsible for developing guidance that sets limits on the amount of paper information distributed to the public upon request.

NCSL understands the intent of H.R. 1790 but is concerned about the language of the bill as introduced. NCSL has three concerns. First, NCSL believes the states need unimpeded access to nation-wide OCA information. Second, NCSL firmly supports state consultation during development of federal policy governing access to OCA information. Third, NCSL is concerned about provisions of the H.R. 1790 that may preempt state freedom of information laws.

First, states have an obligation to plan for and respond to chemical releases that occur within their borders. In order to fulfill these planning and response duties, states must have unimpeded access to OCA information. As introduced, H.R. 1790 provides authority for the EPA administrator to withhold OCA information from the states. Specifically, NCSL recommends amending Section 2(c)(2) and Section 2(f) to ensure that the proper state planning and response authorities have access to site-specific, nation-wide OCA data in electronic form.

Second, states should be consulted during development of federal policy governing public access to OCA information. As introduced, H.R. 1790 requires the EPA administrator to consult with officials from other federal agencies during development of policy regarding availability of OCA information in both electronic and paper form. NCSL recommends amending Section 2(c)(7) and Section 2(d)(1) to require the EPA administrator to also consult with state officials during development of such policy.

Third, H.R. 1790 may preempt state freedom of information laws in order to limit or control distribution to the public of OCA information. It is NCSL policy that federal preemption of state law is not warranted, except when necessary or unavoidable in specific instances when a compelling national objective must be achieved. NCSL urges Congress and the administration to clearly articulate the risks to national security posed by a nation-wide, searchable OCA database on the Internet.

NCSL looks forward to working with Congress and the administration members and staff to craft a bill that provides the utmost protection of public health and the environment.

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